

MARINE SANCTUARIES PROGRAM REAUTHORIZATION

HEARING BEFORE THE SUBCOMMITTEE ON OCEANOGRAPHY AND THE SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT OF THE COMMITTEE ON MERCHANT MARINE AND FISHERIES HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

H.R. 4208

TO AUTHORIZE APPROPRIATIONS TO CARRY OUT TITLE III OF THE
MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT OF 1972
DURING FISCAL YEARS 1989, 1990, 1991, AND 1992

APRIL 19, 1988

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MARINE SANCTUARIES PROGRAM REAUTHORIZATION

TUESDAY, APRIL 19, 1988

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON OCEANOGRAPHY, AND SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT, COMMITTEE ON MERCHANT MARINE AND FISHERIES,

Washington, DC.

The subcommittees met, pursuant to notice, at 2:10 p.m., in room 1334, Longworth House Office Building, Hon. Mike Lowry (chairman of the Subcommittee on Oceanography) presiding.

Present: Representatives Lowry, Studds, Hutto, Hughes, Pickett, Saxton, and Herger.

Staff present: Curt Marshall, Nancy Tyson, Jan Chisolm, Larry Flick, and Lisa Pittman.

STATEMENT OF HON. MIKE LOWRY, CHAIRMAN, SUBCOMMITTEE ON OCEANOGRAPHY

Mr. LOWRY. I call this joint hearing of the Subcommittee on Oceanography and the Subcommittee on Fisheries and Wildlife Conservation and the Environment to order.

Our Ranking Minority Member will be joining us soon. Our lead-off witnesses today will be three distinguished Members of Congress who have been very active in the National Marine Sanctuary issues and programs. And when we get to our first panel, those distinguished Members of Congress will be our first panel.

This hearing is on the National Marine Sanctuary Program. The Subcommittees on Fisheries and Wildlife Conservation and the Environment and Oceanography are hoping to have a markup in the not too distant future. Hopefully on May 19. So we're very interested in having those recommendations and observations on the reauthorization legislation that the subcommittees will hear comments on by our witnesses today.

I'd like to ask unanimous consent that my opening statement be placed in the record, for the sake of saving time, and call on the distinguished Chairman of the Subcommittee on Fisheries and Wildlife Conservation and the Environment for any opening statement he might care to make.

[The opening statement of Mr. Lowry follows:]

**STATEMENT BY THE HONORABLE MIKE LOWRY (D-WA)
REGARDING THE REAUTHORIZATION OF THE NATIONAL MARINE
SANCTUARY PROGRAM
SUBCOMMITTEE ON OCEANOGRAPHY**

April 19, 1988

Today we will be hearing testimony about the reauthorization of the National Marine Sanctuary Program. I would like to welcome our witnesses today and those of you who are interested in this important but rather low-profile marine resource management program. I am very anxious to hear what our witnesses today have to say about various issues which should be considered in the context of the reauthorization process. I happen to believe that this particular reauthorization process is extremely important to the Marine Sanctuary Program, and I believe that the process can help inject a new vitality into the marine sanctuary management and designation process.

I would also like to note that the Subcommittee on Oceanography and the Subcommittee on Fisheries and Wildlife Conservation and the Environment, have scheduled a scheduled a joint Subcommittee markup on May 19th, and we look forward to moving this legislation through the Committee and to the House Floor in a fairly rapid fashion. Therefore, it is important that witnesses be as precise and succinct as possible in making recommendations for legislative changes to the Act. While H.R. 4208, a general reauthorization

bill for the National Marine Sanctuary Program, was introduced on March 21st, by myself, Mr. Jones of North Carolina, Mr. Studds, Mr. Fascell, Mr. Alexander, and Mr. Hughes. I would expect that H.R. 4208 will be the primary vehicle for consideration of other issues which are likely to be discussed at today's hearing. In fact, there are a number of issues which I would hope that witnesses would address as specifically as possible at today's hearing.

First, the Administration is recommending reauthorization of Title II of the Marine Protection, Research and Sanctuaries Act at a level of \$2.325 million for FY 1989, and such sums as may be necessary for FY 1990. Is this amount sufficient for managing the existing sanctuaries and designating new sanctuaries which Congress and the Administration deem as important? I would appreciate comments regarding the adequacy of this level of support for the program over the next four years.

Second, another issue in which the Subcommittees are interested is the question of assessment and recovery of damages to sanctuary resources. In fact, my colleagues, Mr. Studds and Mr. Lagomarsino, have introduced legislation, which we would hope to incorporate into the reauthorization process to address this issue. Two recent groundings of large commercial vessels, one in the Key Largo National Marine Sanctuary and one in the Gulf of the Farallones National Marine Sanctuary, have caused destruction of coral reef in the first instance, and destruction of seabird and crustacean

habitat in the second instance. At this time, NOAA does not have the explicit authority to assess damages to sanctuary resources and to use the sums recovered for the restoration or replacement of those resources. If the legislation which has been introduced or to be enacted, it would enable NOAA to use some of the funds from the settlement of the WELLWOOD incident on restoration of the coral reef which was damaged in the Key Largo National Marine Sanctuary.

Third, another issue which will ^{be} discussed and is likely to come up repeatedly in the future, is the question of whether NOAA can enter into concession agreements within National Marine Sanctuaries similar to those entered into by the National Park Service for certain types of activities. At this time it is unclear whether NOAA has such authority and whether such authority should be explicitly conferred to NOAA in order allow some commercial activities within a sanctuary, while at the same time protecting the purpose for the which the sanctuary was designated originally.

Fourth, questions have been raised about the pace and the general administration of the designation process. For example, the Flower Garden Banks Marine Sanctuary has been "considered" for over 10 years, and is not yet designated. Although Congress attempted to remedy some of the problems with the designation process in 1984, based on recent history, there is considerable uncertainty and potential delay associated with the existing designation process.

Finally, a number of sites have been suggested for possible

legislative or quasi-legislative designation within the context of the reauthorization process. These sites include (1) Monterey Bay, (2) San Juan Islands, (3) Outer Washington, and (4) Stellwagen Bank and Nantucket Sound and Shoals. I look forward to hearing further testimony about these proposed designations.

Finally, I believe that this reauthorization process is an important step in revitalizing a program which could contribute substantially to our nation's recognition and protection of unique marine areas. I also believe that a revitalized National Marine Sanctuary Program could contribute substantially to public education and research about the importance our nation's estuaries, oceans, and coastal areas, and the resources which inhabit them.

At this time I would like to defer to Chairman Studds, the Chairman of the Subcommittee on Fisheries and Wildlife Conservation and the Environment.

Mr. STUDDS. No. I have no statement.

Mr. LOWRY. We appreciate that.

Mr. Saxton, do you have an opening statement, you would care to make?

Mr. SAXTON. In the interest of time, I will decline.

Mr. LOWRY. Well, thank you very much.

Mr. SAXTON. Mr. Chairman?

Mr. LOWRY. Mr. Saxton.

Mr. SAXTON. May I ask unanimous consent that Mr. Davis' statement be included in the record at this point?

Mr. LOWRY. Without objection, the statement of Congressman Robert Davis is included in the record at this point. Also, we will include in the record the statement from the Ranking Minority Member, Mr. Shumway.

[The statements of Mr. Davis and Mr. Shumway follow:]

STATEMENT BY HON. ROBERT W. DAVIS, A U.S. REPRESENTATIVE FROM MICHIGAN

From the first Sanctuary designated in 1975, the Civil War ironclad U.S.S. *Monitor*, the National Marine Sanctuaries Program has sought to conserve areas of the marine environment as living laboratories and for the enjoyment of future generations.

The progress of this Program has been slow, with only seven Sanctuaries created since the passage of Title III of the Marine Protection, Research and Sanctuaries Act in 1972. Experts have selected over 30 areas in Great Lakes and U.S. marine waters which are eligible for inclusion. NOAA has indicated that it will be designating two new sites this year and another in 1989. However, the proposed budget for the Program is significantly smaller than last year, leading us to wonder if these new Sanctuaries will be designated or, if they are, if existing Sanctuaries will suffer.

I am also concerned that not all regions of the U.S. are represented in the Sanctuary program. There are no Sanctuaries which are active candidates in the Great Lakes, the North Atlantic or the Pacific Northwest. Each of these regions is represented on the Site Evaluation List, and I hope that, with adequate resources, NOAA will step up its consideration of these yet unrepresented areas.

Finally, last week the House passed S. 858, a bill granting states title to abandoned shipwrecks in state waters. Congressman Shumway had attempted to improve this bill by clarifying that U.S. management authority over shipwrecks located within National Marine Sanctuaries would be paramount. This amendment failed. The authorization of this Program appears to me to be the second-best place to address this issue, as well as the question raised in comments received from NOAA that actual title to these shipwrecks should remain in U.S. hands.

I also want to welcome Congressman Robert Lagomarsino who will be sharing with us his bill, H.R. 3772. Its many provisions are designed to help protect the beautiful Channel Islands National Marine Sanctuary.

Thank you.

STATEMENT BY HON. NORMAN D. SHUMWAY, A U.S. REPRESENTATIVE FROM CALIFORNIA

Thank you, Mr. Chairman. I am pleased that the reauthorization of Title III of the Marine Protection, Research, and Sanctuaries Act, to extend the National Marine Sanctuaries Program, is supported by the Administration. As far as I know, the matter is noncontroversial.

Mr. Chairman, I know that you have introduced legislation to reauthorize this program. As well, other Members, including my good friend improvements and adjustments to the law. I am sure that this Committee will move swiftly to consider these proposals, and I look forward to that action.

I also hope that the Administration's proposals for changes in the marine sanctuaries law will be considered carefully by this Subcommittee. The Administration has requested to restore the Secretary's authority to enter into agreements with states regarding enforcement of sanctuary regulations; they have requested a clarification in the law regarding permit violations and enforcement; and they have asked for

specific authorization for search and seizure powers for Federal enforcement officers within sanctuaries. These all seem to be constructive suggestions.

Again, Mr. Chairman, I look forward to working with you on legislation to extend this program and I welcome today's witnesses.

Mr. LOWRY. Well, if we could begin, then with our first witness, the distinguished gentleman from California, Mr. Robert Lagomarsino from the 19th Congressional District, who's been very active on this important issue.

Your prepared statement will be inserted immediately following your oral presentation. So, Bob, if you would just proceed ahead as you would care to.

**STATEMENT OF HON. ROBERT J. LAGOMARSINO, A U.S.
REPRESENTATIVE FROM CALIFORNIA**

Mr. LAGOMARSINO. Chairman Studds, Chairman Lowry, members of the committee, I'm pleased to appear before you today in support of reauthorization of the Marine Protection, Research and Sanctuaries Act of 1972.

As the committee knows, it was in the Santa Barbara Channel in the District I represent that the event occurred which led, many of us feel, to the passage of the Marine Sanctuaries Act in 1972; the oil well blow-out on platform "A" in January, 1969. One result of this event was the enactment by the California Legislature of a bill I authored creating a 200-square mile sanctuary around the Santa Barbara Channel Islands. Another was the passage by Congress in the same year of the Marine Protection Research and Sanctuaries Act of 1972.

In 1980, Congress enacted legislation which I authored creating the Channel Islands National Park, and in 1981, the area for six miles around the islands was designated a National Marine Sanctuary, joining sanctuaries off North Carolina and Florida.

Last September an event occurred which threatened both the sanctuaries and the park—Mr. Chairman, I'm summarizing my statement. I would ask that the entire statement be included in the record.

Mr. LOWRY. Without objection, so ordered.

And let me quickly welcome, the distinguished Congressman from Florida, Mr. Fascell. We will proceed with your statement, Mr. Fascell as soon as Mr. Lagomarsino is finished.

Mr. LAGOMARSINO. Which threatened both the sanctuaries and the park, a collision between two foreign-flag vessels—the Pac Baroness, a Liberian-registered ore carrier, and the Atlantic Wing, a Panamanian-registered freighter carrying automobiles, occurred about 12 miles off Point Conception, the western entrance to the Channel. The Pac Baroness sank, and almost immediately began leaking Bunker C fuel oil. Within three days the resulting oil slick had expanded to 18 square miles and was threatening to come ashore on San Miguel Island, the western-most of the islands and the breeding ground for sea lions, seals and elephant seals.

At my request, I flew over the slick, accompanied by the Coast Guard and by my colleague, Elton Gallegly, and at our request the Coast Guard agreed to convene a Board of Inquiry into the accident. Fortunately, the wind shifted and the oil did not come ashore. But it's clear that had the wreck occurred a few miles to the East,

or had it involved an oil tanker, for example, the sanctuary and the park would have sustained damage.

At my request, members of the Full Committee joined in in Santa Barbara last year to collect testimony on the event, and in December, the Coast Guard and Navigation Subcommittee held a hearing here in Washington, D.C. to consider legislative remedies.

My bill, H.R. 3772, the Santa Barbara Channel Protection Act, was the outgrowth of those hearings, and five members of the full committee are cosponsors, as well as Congressman Gallegly. There are five titles covering a number of suggestions made at the earlier hearing, ranging from improved navigational aids and vessel traffic control, to tug and fireboat protection. And we feel that the bill embodies a comprehensive approach, and hope it receives favorable consideration.

In particular, though, Mr. Chairmen, I'd like to direct the committee's attention to Title IV of the bill, the Natural Resource Protection Title; and I want to acknowledge at this point, the debt which we owe to the Chairman, Mr. Studds, whose H.R. 3640 is the basis for Title IV in my bill. And I'm pleased to be a cosponsor of H.R. 3640.

Under Title III of the Marine Protection, Research and Sanctuaries Act, the National Oceanic and Atmospheric Administration, NOAA, may assess civil penalties for violations of sanctuary regulations. Although there is no explicit authority to recover monetary damages for harm to sanctuary resources, NOAA has brought two successful lawsuits on this basis.

Title IV of my bill addresses problems which were encountered by NOAA and by the Justice Department in the pursuit of these cases, and both agencies were consulted in developing this title. First, Title IV grants NOAA explicit authority to bring resource damage actions, to respond to incidents threatening or harming sanctuary resources, and to assess the damages that will be sought for injury to sanctuary resources. It also makes persons who harm sanctuary resources, and any vessels used in such act, liable.

Second, the act authorizes the creation of a special fund to receive monetary damages collected under the above authority. Under current law, any funds recovered are deposited in the general fund of the Treasury, rather than being earmarked to repair or enhance the damaged resources or otherwise used by NOAA to benefit the injured resource.

Third, the bill corrects a problem experienced by the Justice Department when it attempted to serve process on the owner of the foreign-flag vessel, the M/V Wellwood, which ran aground in the Key Largo Marine Sanctuary. A final point made by the bill is to create a rebuttable presumption of correctness when damages are assessed under regulations prepared by the Department of the Interior.

Penalties recovered under this provision are to be distributed in the following order of priority—and I go into detail on this in the statement—20 percent or up to \$750,000 to be placed in a National Marine Sanctuary Emergency Response and Damage Assessment Fund. This will give NOAA seed money to quickly respond to emergencies or threats. Two, to restore or replace damaged resources, or to acquire equivalent sanctuary resources. And this comes from the

Superfund law, where penalties from parties responsible for polluting an area are used to make the site whole again. Three, to reimburse the National Marine Sanctuary Program Emergency Response and Damage Assessment Fund for costs incurred, ensuring that funds will be available for the next incident. Four, to manage the damaged marine sanctuary; or five, to manage any other National Marine Sanctuary.

Title IV would apply to the prospective payments made under the settlement agreement of the two NOAA cases, and to any other funds recovered after November 30, 1986.

I feel, Mr. Chairman, that the changes proposed in Title IV of my bill would help ensure that those who damage our marine resources will bear the liability for correcting those damages, and that adequate funds will be available for taking emergency action whenever the need arises. The wreck of the *Pac Baroness* provides a warning that we can only ignore at our peril. Let's not wait for another catastrophe to strike, as it did in 1969 and again last year.

And again, thank you for providing me this opportunity to address the issue, and I'd be happy to answer any questions you may have.

[The prepared statement of Mr. Lagomarsino can be found at end of hearing.]

Mr. LOWRY. Thank you, Congressman Lagomarsino, for your leadership.

Congressman Fascell.

STATEMENT OF HON. DANTE B. FASCELL, A U.S. REPRESENTATIVE FROM FLORIDA

Mr. FASCELL. Chairman Lowry, Chairman Studts, and members of the two subcommittees, I've got a prepared statement which I ask consent to have included in the record, and I want to just proceed for a moment to say that, first of all, I express my appreciation to the two subcommittees and the parent committee for the interest that they have shown as long as I've been around here, on our ocean and marine resources.

Without the interests of this committee and the hard work that's been put in in resolving some of the difficult conflicts, I dare say we'd be in a lot worse shape than we are today. And goodness knows, we're in pretty sad shape when we look at the oceans of the world, and what's happening to our marine resources everywhere. It is the constant vigilance of oversight and legislation that makes it possible, maybe, to have a chance and turn this thing around, because man is destroying the environment faster than God ever created it.

I just wanted to express my appreciation publicly for all the hard work that's been done by these two subcommittees and the full committee in this regard. And also to say, of course, that I strongly support the reauthorization bill that's before you, and urge, with respect to marine sanctuaries, that studies be undertaken, as I have suggested, and which you are considering including in this bill, to expand the marine sanctuaries, where it is necessary, and to permit the Secretary, under the existing authority he has, to take such action as necessary to protect those sanctuaries.

In our area where we have the last of the living reefs, we've got the usual pressure. I mean, it's understandable; it's normal, I suppose. People go out there and unwittingly, or wittingly, unfortunately, abuse it in every possible way you can think of, not the least of which is breaking it off and taking it back, and sanding it up and cleaning it out, and selling it. You know, so nobody else can see it. So we do have that problem, and it seems to me that the better course of wisdom, at this point, is simply conduct the studies, the resources are out there, and make a reasonable determination as to whether or not these sanctuaries ought to be expanded and protected.

I support the Studds bill in the full, on the mitigation fund. I think it's absolutely essential. There are all kinds of horror stories. Our own horror story was the freighter that went aground in the Biscayne National Park, and destroyed 6,000 square feet of reef. They proceeded with the penalty program and got the money, of course. It went into the General Treasury, and nothing can be done with respect to the restoration of the resource, if anything indeed could be done. Not a good system.

In the competition we have these days, it seems to me that the principle of requiring those who create the damage to directly take that money put it back for restoration, is a good program. And of course, that would be beneficial to the resources all over, not just in Florida; California, Maine, New York, the Virgin Islands, and many, many other places.

So that's it, Mr. Chairman. I just wanted to say I congratulate you and thank you, and hope you see fit to include these other matters, both the Studds proposal and the suggestion that I have made in the reauthorization bill that you have before you.

[The prepared statement of Mr. Fascell can be found at the end of the hearing.]

Mr. LOWRY. Thank you Chairman Fascell, for your long-standing interest in this, which is shown by the fact you have the only congressional district with two sanctuaries in a congressional district. So you've been working on this a long time. Thank you very much.

Thank you very much, Mr. Lagomarsino.

Mr. LAGOMARSINO. Thank you.

Mr. LOWRY. I'd like to call now, Mr. John Carey, Deputy Assistant Administrator, NOAA; and Mr. David Gackebach, Chief, Concessions Division, National Park Service, U.S. Department of the Interior.

Gentlemen, thank you very much for joining us on this important reauthorization. As you are aware, we're also anticipating, in addition to reauthorization, looking at these other issues that we're considering incorporating into one form, or not incorporating in our markup, scheduled at this time for May 19. So we'd appreciate your comments on any of those provisions that are before us, that the subcommittees will be considering at that time. Your prepared statements will be inserted immediately following your oral presentations.

So, Mr. Carey, if you would care to just start off as you would like to summarize your statement, please.

STATEMENT OF JOHN CAREY, DEPUTY ASSISTANT ADMINISTRATOR, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Mr. CAREY. Mr. Chairman, members of the subcommittees, it is a pleasure to be here today, and to discuss the reauthorization of Title III of the Marine Protection, Research, and Sanctuaries Act.

Accompanying me today, on my right, is Mr. Joseph Uravitch, who is the Director of NOAA's Marine and Estuarine Management Division.

Mr. Chairman, if it is acceptable, I would like to submit my prepared statement for the record, and summarize the key points.

Mr. LOWRY. Yes, thank you very much. So ordered.

Mr. CAREY. Thank you, Mr. Chairman.

The administration supports reauthorization of Title III at a level of \$2,325,000 for fiscal year 1989 and such sums as may be necessary for fiscal year 1990.

Attached to my prepared testimony is a draft legislative proposal which was transmitted to the Congress on April 14. Our proposal would reauthorize Title III at the levels I just indicated, and would make several technical, or housekeeping, amendments which we feel are necessary as a followup to the amendments that were made to the act in 1984.

These amendments would restore the authority under Title III for the Secretary of Commerce to enter into agreements with the States regarding the enforcement of sanctuary regulations. It would restore the Secretary's authority to enter into enforcement agreements on a nonreimbursable basis. It would clarify that violations of Title III include any violation of a permit that is issued under Title III. It would empower Federal and State enforcement officials and officers to conduct searches, and to seize vessels, resources and other items used or taken in violation of Title III. And finally, it would specify that items seized in connection with a violation are subject to forfeiture in accordance with the customs laws.

Mr. Chairman, all of these provisions are consistent with other resource statutes enforced by the Secretary of Commerce, such as the Magnuson Fishery Conservation and Management Act. And, while technical in nature, these changes in the law are of great importance to us in our day-to-day operation of the program. We would, therefore, respectfully urge their consideration as part of the current reauthorization.

The 1984 amendments improved the sanctuary program by strengthening affected public and Federal agency involvement, clarifying procedures and improving resource protection. Under the new designation standards and procedures, we are designating new sanctuaries at a pace which will allow us to integrate new sites into a well-managed National Marine Sanctuary System. Assuming favorable public comment, we intend to designate one new National marine sanctuary per year in Fiscal Years 1988, 1989 and 1990, with on-site operations beginning in the following year.

Cordell Bank, in Federal waters 20 miles west of Point Reyes, CA, should be designated by the end of this fiscal year. We plan to designate the Flower Garden Banks National Marine Sanctuary,

located 115 miles south of the Texas-Louisiana coast, in fiscal year 1989. And this will be followed in late 1989 or early fiscal year 1990, by the designation of the Norfolk Canyon National Marine Sanctuary, 60 miles off the Virginia coast.

In addition to these three sanctuaries, which I have mentioned, which will bring us to a total of 10 in the system, further candidate sanctuaries will be drawn from our Site Evaluation List. That Site Evaluation List, as members of this committee are aware, was first developed back in 1983. However, because we have seen little or no active State interest or support for designation of new candidate sanctuaries since 1984, and because that Site Evaluation List is now somewhat outdated, we plan to open that Site Evaluation List up for further public comment this summer.

Mr. Chairman, as you know, the 1984 amendments also added cultural and historical resources to the list of factors to be considered in designating sanctuaries. In response to those amendments, we are developing a separate Site Evaluation List for historical and cultural resources, such as the Monitor. We have been proceeding cautiously and deliberately in that effort because of the need to test new technology and methodology, as well as the possibility of breaking new legal ground.

And in this regard, Mr. Chairman, I should note that we would prefer to have some specific statutory authority granting us title to these resources—for example, in the case of shipwrecks. This provision was not included in recent legislation enacted by the Congress. And while we can still manage under Title III authorities, we are concerned that our actions may still be subject to legal challenges that would be corrected by the addition of this language in the law.

Mr. Chairman, we have been working hard since 1984 to improve the National Marine Sanctuary Program. We have almost completed the standardization of penalty schedules for violations of the regulations governing each sanctuary. We have supported sanctuary operations on the East and West Coast by hiring on-site staff necessary to protect the resources, assist researchers and educate the public. We have also developed an on-site emergency response capability, which we have used in emergencies ranging from ship groundings to aiding divers in distress. An automated spill response plan is now in place for the Channel Islands and Key Largo Sanctuaries.

We are working on the development of efficient research and education programs, comparable to those operating or under development in our National Estuarine Research Reserve System. We are developing an on-site sanctuary manager's operations manual. And we are conducting a review of the resources and regulations of the existing sanctuaries to determine if we can better protect the historical and cultural resources of National importance, which are located within these sanctuaries.

We are committed to the operation of a strong, efficient and effective sanctuary program. As the more than half a million visitors to Key Largo in 1987 can attest, and those include resource managers from other countries who came to us for training, we are educating the public and protecting, and managing and undertaking research. All of these activities we look forward to continuing in the coming years.

Mr. Chairman, Mr. Uravitch and I would be happy to address any questions the committee might have regarding the program or related legislative proposals which are currently under consideration. We have also prepared a very brief descriptive paper, which is attached to my prepared statement. We would like to submit it for the record, to give a current status report on each of the seven existing sanctuaries, as well as the three new ones which are under review and are mentioned in my statement.

[The prepared statement of Mr. Carey can be found at end of hearing.]

Mr. Lowry. Thank you, Mr. Carey, for your statement.

Mr. Gackebach, thank you for joining us. We're interested in your experience in the management of concessions in the National Park Service, relative to that question applying to the Marine Sanctuary Program. And we appreciate you joining us to give us your history of that.

STATEMENT OF DAVID E. GACKENBACH, CHIEF, CONCESSIONS DIVISION, NATIONAL PARK SERVICE, U.S. DEPARTMENT OF THE INTERIOR

Mr. GACKENBACH. Thank you, Mr. Chairman, members. I'm David Gackebach from the National Park Service, in charge of the Concessions Program. I would like to give you a little insight into how the National Park Service deals with concessions and how we're able to maneuver under Public Law 89-249, which provides for that service.

I do have a brief statement, which I would like to submit for the record, concerning the law and how we administer the program.

In the past, in the original beginning, we did have problems with concessioners because we tried to fold the concessions program into a technically park resource program. Recently, we have hired professionals and have a Concessions Program which deals with these concessioners on a business-like basis.

Basically we have taken our law which pertains only to concessions in the National Park Service, established regulations through the Code of Federal Regulations process, developed policies, and issued guidelines to implement those policies.

We go through an elaborate planning process to determine, first of all, whether concession facilities are necessary and appropriate for the public. We do marketing studies, feasibility studies, environmental assessments, and environmental impact studies, if necessary, to determine what specifically will be developed within a National Park System area. Once that is determined, we follow through on that process in our design and construction oversight programs.

In developing a contract, we feel it's extremely important to protect the Federal Government in the interests and the obligations that we have in that contract; to provide incentive for private industry, and protections and obligations on concessioners in those contracts; to spell out the specific requirements to alleviate ambiguity, provide variables so that when certain things do happen, there are sanctions and ways of altering those contracts so that neither one of us are harmed. Then we go through an elaborate

process of evaluating those offers to determine who has the best offer in regards to management, financial, and meeting the terms and conditions of our contracts.

Administering the contract, we feel, is extremely important; we don't issue that contract and walk away from it. We have an elaborate administrative process which goes through contract compliance on an annual basis and determines whether the concessioner is meeting the terms and conditions of the contract, whether it be equal employment opportunity, the construction program and improvement program required and so on. We also have an elaborate set of standards for all types of services that concessioners must follow, and we do inspections on them annually to determine whether they're providing satisfactory service, which could lead to termination if they are not.

We also approve concessioners' rates. The law states that we will provide visitors with services that are reasonable within rates. Therefore we have an elaborate rate program to determine what the concessioners' rates will be.

We also use professionals in the industry in dealing with those contracts; legal; accountants; tourism professionals; food service; lodging; and other types of resource personnel to make sure that we do not overlook any of our needs for resource protection, and from a business standpoint.

To get into this business, you must realize that you will not be able to do it for free. There will be some cost to the Federal Government. Even in our contracts we have some form of subsidy from the minor subsidy in a large operation, such as providing roads up to certain areas for the concession services, all the way to providing actual buildings for concessioners to use, where we feel it's necessary that we have that service for the convenience and needs of the public. So your subsidy could be at many various levels. You will also need to have a program designed and then administered. Once you develop the program, then you will need to administer the program. So there will be some costs involved in a program.

If the opportunity arose today, we probably would have some minor corrections that we would like to see in Public Law 89-249, but we feel we've been able to deal with it very, very well. Some of the facilities that are existing within the parks today would not be permitted under our present policies because of resource protection reasons. Most of the other ones, however, would continue to be operative.

And with that, I offer to answer any questions you might have.

[The prepared statement of Mr. Gackebach can be found at end of hearing.]

Mr. LOWRY. Thank you very much, Mr. Gackebach, for joining us.

If I could, perhaps, just followup a little bit, since we sort of ended the panel's opening testimony on the question. How long has the history been of contracting? There was major legislation in 1965, is that correct?

Mr. GACKENBACH. The Concessions Policy Act was enacted in 1965. But we had administered concession contracts prior to that. We had been issuing them since the early 1900's.

Mr. LOWRY. So there has been sufficient history with experience there.

You mentioned that there are costs and subsidies for providing those chosen services. Is there a way that you can compare those to if the Park Service itself was providing those services as opposed to contracting with a concessioner?

Mr. GACKENBACH. I somewhat hate to answer that question, because knowing the Federal Government, it may be very hard to provide those services ourselves with the constraints that we have. But I firmly believe that concessioners can provide it at less cost than we can.

As a matter of fact, that can be evidenced in construction programs that they do, which are far cheaper than what they would cost us if we provided them.

Mr. LOWRY. Does the Park Service make the determination of the service being determined to be necessary for the public?

Mr. GACKENBACH. Yes.

Mr. LOWRY. And then you proceed ahead by which to figure out how to provide that service?

Mr. GACKENBACH. Correct.

One thing that must be realized is a lot of our facilities were in the parks before they became parks. So we did assume those facilities, many of which are now historical structures, which we would probably not eliminate if we wanted to.

Mr. LOWRY. Is there a problem of the private concessioner pushing the Park Service toward making a decision for a service being provided, that if we weren't using a private concessioner-type of approach, we wouldn't be facing that sort of pressure?

Mr. GACKENBACH. There's probably some truth in that, and we do have that in some areas. Except, you know, we feel we're dealing with it from a business standpoint, and we're able to deal with those folks from that viewpoint. We don't feel that pressure as great as maybe they did awhile ago.

Mr. LOWRY. And do you have problems with that? It seems to me that would be sort of a natural pressure. I mean that would be a normal business-type approach for anybody in business.

Mr. GACKENBACH. Sure.

Mr. LOWRY. Are there problems protecting the natural resources, that are the Park Service responsibility, handling that sort of pressure? And of course, we're asking this question as relative to the question that will be before us in legislation relative to the marine sanctuaries.

Mr. GACKENBACH. Yes. We have protections in our planning process, and environmental assessments. In our contracts we develop those contracts—as a matter of fact, if we are in a situation where we feel a concession facility is degrading the resource, we can remove that facility from the resources, relocate it, or require that it be moved out of the park, with a great reduction in the cost to the Federal Government for doing so, versus terminating the contract, or somebody just wanting to leave the operation. So we feel we have the protections, and the concessioners are well aware of those protections when they contract with us.

Mr. LOWRY. Thank you, Mr. Gackenbach.

Mr. Carey, if I could just stay on the question I've raised with Mr. Gackenbach.

What would be your opinion, or position, of a program in the Marine Sanctuary Program like the National Park Program on concessioners?

Mr. CAREY. At this point, the administration hasn't taken a position on that. As you know, right now there are no concessions within any of the national Marine Sanctuaries. I think a lot of the issues that have been just raised are among the things that we're looking at. Certainly we can see pros and cons of proceeding down this path. There could potentially be income and resources for the program; there could be new avenues opened up for education alternatives for the public. There might even be some impacts on local economy that would be positive.

On the other hand, as stewards of the sanctuaries, we're very concerned about the potential impact on the environment. We're also concerned about the overhead that would come with a program like this, the regulatory aspects of it, the bureaucracy that might be required to manage and administer such a program.

And of course, one of the considerations we have that I think makes this a little bit different than the Park Service experiences, is that we really don't own any land for operating concessions. Certainly from a shoreside point of view, we're just using existing public facilities and education facilities. So that's another dimension to this. These are all things that we're looking at and trying to weigh.

One of the things that we have done, though, is ask our General Counsel for an opinion as to the extent of our authority right now under Title III, to enter into these agreements. And we have been provided with an opinion that says the statutory authority as currently exists within the Act would not be sufficient, and that additional authority would be necessary, perhaps patterned after the language that is used by the Department of Interior. And we would be happy to make a copy of that legal opinion available to you for part of the record.

[The submission can be found at end of hearing.]

Mr. LOWRY. Yes, if you would. And thank you, Mr. Carey.

If, as mentioned earlier, we're looking at a tentative scheduled markup May 19th, I think this is a very important question. I would not want to push the Department to making an opinion on something this important too quickly. Do you think that by May 19th, you would be able to have an opinion as to whether you think the resource could be properly stewarded with a concessioner program?

Mr. CAREY. Yes, sir.

Mr. LOWRY. Thank you very much.

I didn't mean to take so much time on that one relatively narrow question, but it is an important question.

Mr. Carey, are you experiencing, and do you foresee for the future, quite a growth in the public utilization of the marine sanctuaries?

Mr. CAREY. Yes, sir. Certainly the numbers show that in terms of the public interest, and the public access that's been opened up. We're seeing that growing each year.

Mr. LOWRY. I am concerned about the reauthorization request by the administration of, I believe \$2.35 million. I understand we're in very tight fiscal times, but that amount may not be adequate to meet the growing need that we're talking about at this point. And relating to that concern, noticing the length of time it has taken for the designation, for instance, of sanctuaries that you actually mentioned in your opening statement, Flower Garden Banks, Cor-dell Bank; is that reauthorization really adequate to meet these needs?

Mr. CAREY. If I may answer your question, there's two parts to that.

Mr. LOWRY. Right.

Mr. CAREY. First of all, with respect to the operations of the program, we have concentrated on building up the staff support necessary to provide for good operation of the existing seven sanctuaries that we have. Right now we have some 33 positions that are out in the field, that are working in each of these sanctuary areas, and providing that support to the public. That has been a No. 1 concern to us, to make sure that the existing sanctuaries are managed well, are staffed well, and that we are dealing with the growth issues that you have raised.

With the respect to the three that I mentioned in my statement, and the ones that have been around, there were some changes in the process which were brought on by the 1984 amendments that caused us to go back and recycle through the designation process. We are trying, and we have tried to work on a parallel track of putting out the new regulations, and at the same time bringing along those three sites under those new procedures. And we have made progress in doing that, as evidenced by the fact that we are moving ahead on those three, and at the same time ready to issue the final regulations for the new process which should be out next month.

As to the future designation, I think we're all concerned about getting a little bit better track record of an approval process. Under the new procedures we're experiencing a 3-year timeframe. Could we do better on that? Yes, probably we can. And we will, with the experience that we're gaining, and with the new regulations that will be place. I think we need to try to bring that down. At the same time we need to make sure that we are having adequate public participation and involvement in that process. And it is a very carefully designed process to make sure that the public and Federal agencies get access at the various decision points in that process.

Mr. LOWRY. Do you have an average cost for sanctuary designation, what it costs to designate a sanctuary on an average?

Mr. CAREY. Mr. Uravitch is indicating that that roughly runs about a quarter of a million dollars for the staff costs and associated overhead costs that go with the process, the designation process.

Mr. LOWRY. So if we were looking at some additional designations, obviously we would need to take that into consideration.

What would be the Department's opinion of additional designations for areas such as Nantucket Shoals, Outer Washington, Monterey Bay, Stellwagen Bank, San Juan Islands? These are areas

where there's been an extensive amount of interest shown over the past.

Mr. CAREY. Some of the sites that you mentioned are already on the existing Site Evaluation List. As I indicated, we plan to put the Site Evaluation List back up for public comment this summer. That may result in identification of some new or additional sites to be included on that list, or if nothing else, reaffirmation of the current sites that are on that list. And we would hope out of that public comment process to generate some interest in the identification of the next sites that should be added to the program.

Mr. LOWRY. Thank you.

One short different question. What would your position be on the renaming of the program to the Marine Reserve Program? I am told that we have run into some opposition by some groups, because of their feelings of what sanctuaries meant would be prohibiting them from activities that were not prohibited. And it's been suggested that perhaps a renaming to reserve might be beneficial.

Mr. URAVITCH. Mr. Chairman, I don't think we'd have any major problems with it. I think the biggest problem we would incur would be some basic confusion among people for awhile. It would link up the concept with our Estuarine Research Reserve Program. And we just paid about \$15,000 for some new signs for the west coast, so we'd have to go back and put new interpretive signs together. So that would be the major considerations, I think.

Mr. LOWRY. OK.

Thank you. One last question.

Do you support the Studds damage assessment legislation?

Mr. CAREY. Mr. Chairman, we have been looking at all of the bills. Several bills have been mentioned here that have been introduced. The administration has not taken a position on either the Studds bill or Congressman Lagomarsino's bill. They certainly both have provisions within them that are very attractive, and that we are seriously looking at.

I would say that, with respect to Congressman Lagomarsino's bill, H.R. 3772, we are particularly drawn to the emergency fund provisions which would allow the Secretary to take action if an incident threatens a sanctuary resource, and to set up that emergency response fund. And also in terms of the way in which the bill is crafted with respect to assessing a liability on the vessel owners. But these are the kinds of things that we're looking at, and that we want to provide the committee with a detailed analysis on both of those bills, and a statement with respect to our position on both of them.

Mr. LOWRY. That would be excellent. That would be very helpful to both subcommittees, because we believe we can craft reauthorization legislation here and that we can get a lot of agreement on that it would really improve our program. And so, we're looking forward to working with you on doing that.

Mr. CAREY. Yes, sir.

Mr. LOWRY. I started to ask if there were any further questions, but I used up all the time. So thank you very much for joining us.

Mr. CAREY. Thank you, sir.

Mr. LOWRY. I'd like to call now on the distinguished William Alexander, Congressman from Arkansas.

Thank you very much, Congressman Alexander for joining us. Your prepared statement will be inserted immediately following your oral presentation.

Thank you. If you would just proceed right ahead with your testimony as you would.

**STATEMENT OF HON. BILL ALEXANDER, A U.S. REPRESENTATIVE
FROM ARKANSAS**

Mr. ALEXANDER. Mr. Chairman, I would submit my testimony for the record, if I might, and refer to it and summarize it.

Mr. LOWRY. Thank you.

Mr. ALEXANDER. First of all I wish to join in support of the reauthorization bill, and I might add by way of reference that barring a flood of Biblical proportions, we will not have a marine sanctuary in the State of Arkansas in the near future. But I do come to the committee with a longstanding and continuing interest in the oceans.

My grandfather used to tell me that we all came from seafaring people, but they always went to the high ground for breeding, so I suppose that's how I got to Arkansas. But as a navy diver, and a NOAA aquanaut, a former member of the Board of the American Oceanic Organization, and a member of the Appropriations Committee for Commerce, and thus NOAA, I have continued my interest in ocean matters, and will continue for the indefinite future. I might also add that I have a small interest, a 10 percent interest in the world's only undersea hotel, located in a lagoon at Key Largo, FL, known as the Jewels Undersea Lodge.

All of you are invited to come at a rate of \$500 per person. We'd be glad to accommodate any of you with a special rate without much notice at all.

I support increasing the authorization funding level for the Marine Sanctuaries Program. We must continue to nurture the ecosystems that are vital to the life chain in the sea.

I have come here with a specific mission to ask for authorization for a concession agreement, or arrangement similar to that which is now in existence and was explained a minute ago by the gentleman representing the Interior Department. And I happen to know of a situation in Florida, near where my interest is at Careysport—a sanctuary, at Careysport, which is in the midst of the sanctuary, where a NOAA representative expressed an interest to some private people in the region to restore the lighthouse at Careysport, and to provide accommodations for people to come out and see the lighthouse, and sell them Coca-Colas, and other soda pop, and matters thereunto pertaining, and it was discovered that NOAA did not have the authority to do so.

I believe that, as in the case of Careysport, it's important, of course, always to preserve the resource. That's the primary consideration. But it's also important to serve the public, and to provide the public access to such facilities as visitor information centers, accommodations while they're there, so that they can experience the marine sanctuary, learn about it, convey that information to others who may be of interest. And that's especially important for

students and the young people who may be interested in studying ecology in the primary, secondary, and upper education levels.

As I understand it, we simply do not provide those kind of accommodations for the public under present arrangements. And it seems to me, that an arrangement of that nature, which would meet the test, of course, of protecting the resource, and also serve the public and provide accommodations to the public to experience those marine sanctuaries, would provide a great service to the American people.

That in essence, Mr. Chairman, is the summary of what I present today. I couldn't improve upon anything that was previously said, and I commend, and I learned from the testimony of the previous witnesses.

[The prepared statement of Mr. Alexander can be found at end of hearing.]

Mr. LOWRY. Thank you very much for your interest and long service on this overall protection of the resource.

If I could ask two questions.

We're concerned that it's taken quite a while for the designation of sanctuaries under the existing authorization level. The authorization that I have introduced is a \$500,000 increase. As a Member of the Appropriation Committee, do you think that is a realistic request?

Mr. ALEXANDER. Yes, I do. I don't know that the 302 levels are going to be. We haven't gotten together and carved up the remains yet, so I don't know the answer to the question. But my instinct is it's realistic. And we can talk about it. I think next week would be a good time to confer on that subject.

Mr. LOWRY. OK.

Mr. ALEXANDER. We can adjust it according to the Chairman's wishes and the availability of funds.

Mr. LOWRY. Well, I thank the gentleman very much for that answer.

You and I have a vote on support of the INF Treaty, and so I want to thank you very much for your important testimony, and we will be in recessed for 10 minutes, and I will return.

Thank you very much.

[Recess.]

Mr. LOWRY. I apologize. There were two votes over there. I didn't know it.

If we could reconvene the hearing, please, with our next panel; Mr. Mike Weber, vice president for programs, Center for Environmental Education; Mr. Mark Palmer, executive director, Whale Center, Oakland, CA, accompanied by Dr. Bob Schmieder, president, Cordell Banks Expeditions; and Mr. Jack Archer, senior research fellow, Marine Policy Center, Woods Hole Oceanographic Institute.

Thank you, gentlemen, for waiting to testify. I was just checking to see if we are waiting for Mr. Schmieder.

Mr. PALMER. He'll wander in any moment.

Mr. LOWRY. OK. Thank you.

Actually I was going to apologize, or ask the right way to pronounce his name.

Gentlemen, your prepared statements will be inserted immediately following your oral presentations. If we could begin with Mr. Weber, please.

STATEMENT OF MIKE WEBER, VICE PRESIDENT FOR PROGRAMS, CENTER FOR ENVIRONMENTAL EDUCATION

Mr. WEBER. Thank you, Mr. Chairman.

Good afternoon. My name is Michael Weber. I am vice president for programs of the Center for Environmental Education. The center is a nonprofit citizens organization dedicated to the conservation of living marine resources and their habitats.

I have submitted written testimony on behalf of the following organizations: American Cetacean Society, American Oceans Campaign, Coast Alliance, Defenders of Wildlife, Friends of the Earth, Greenpeace U.S.A., National Audubon Society, Natural Resources Defense Council, Oceanic Society, Sierra Club, and Whale Center. This afternoon, I will summarize the chief points of our statement and recommendations. I wish to thank you for providing us with the opportunity to present our views on reauthorization of the national marine sanctuary program. We hope that our testimony will contribute to a rejuvenation of this small program whose great potential is still unrealized.

If this program is to achieve its potential, Congress must intervene in a number of ways. Let me summarize our recommendations:

First, we urge Congress to reverse the decline in funding for this program and to increase authorization levels beginning at \$4.25 million for fiscal year 1989 and ending with \$5.15 million for fiscal year 1992. We have proposed a mechanism, furthermore, for helping ensure that the executive and legislative branches can gauge the impact of various funding levels on implementation of this program. The administration has certainly not provided a realistic assessment of funding needs. Even as the administration has requested less money, it has promised more sanctuaries. In fact, we have ended up with less money and no sanctuaries.

Secondly, we strongly recommend that Congress establish a timetable for consideration of potential sanctuary sites. Specifically, we recommend that Congress direct NOAA to designate the following sites by 1992: Cordell Bank, Flower Garden Banks, Norfolk Canyon, Monterey Bay, Outer Coast of Washington, Northern Puget Sound, and Stellwagen Bank/Nantucket Sound and Shoals.

Third, we strongly endorse the efforts of Congressman Studds and Congressman Lagomarsino to clarify the authority of the sanctuary program to assess civil damages for injury to sanctuary resources and to ensure that these funds return to the sanctuary program.

Fourth, we implore Congress to resist the surface attractiveness of providing authority for concessions within national marine sanctuaries generally and for the proposed underwater lodge in Key Largo National Marine Sanctuary in particular.

Fifth, we recommend that Congress ensure that NOAA, like the Fish and Wildlife Service and the National Park Service, can

accept gifts of goods or services that contribute to the goals of the national marine sanctuary program.

Finally, we believe that a change in the name of the program will reduce confusion about the program's purposes. We recommend for your consideration the title, National Marine Reserve Program.

Within the 2.2 million square miles of ocean waters under its jurisdiction, the United States possesses an unrivalled diversity of marine habitats, ranging from the coral reefs of the Florida Keys to the Monterey Canyon, which is deeper than the Grand Canyon of the Colorado. An even greater diversity of animal and plant species depends upon the health of these marine environments. Finally, important relics of our history have been claimed by the sea. All of this is our marine heritage, a heritage as rich as any on land.

In 1972, our country committed itself to making a special effort to conserve a small part of this heritage for future generations. Perhaps such commitment was easier to come by in those days of the Santa Barbara oilspill. The commitment has been hard to fulfill.

In 16 years, we have set aside only 7 areas for special consideration as national marine sanctuaries. Only one sanctuary has been designated in the last 7 years. We have refused even these few sites the pitifully small amount of funds they need for their long-term conservation. And the pressure to turn these outstanding natural and cultural areas into theme parks or showcases for industrial use of the ocean continues today.

Funding for the program has always been low, but in recent years it has been abysmally low. Since Congress last reauthorized Title III, appropriations for the program have declined. As a result, two existing sanctuaries don't have on-site managers and research and education activities at the other sites have withered.

Even so, the program's emphasis on resource protection has paid off. I will give but one example. At Key Largo National Marine Sanctuary, John Halas developed a mooring buoy system that dramatically reduces damage to fragile coral reef structures from carelessly placed anchors. The system has proven so successful that it is being adopted elsewhere in the Keys and in the Caribbean.

You only need to dive outside the Key Largo and Looe Key sanctuaries to see what management-as-usual can do. In those areas, you will not find the number, size, or diversity of fishes you find in the sanctuaries. Instead of living coral structures you are more likely to find rubble or diseased coral. Areas such as Key Largo and Looe Key, which are visited by tens of thousands of Americans each year, deserve something better than management-as-usual. They deserve a national marine sanctuary program that has the support necessary to protect these areas for all Americans into the future.

Even if the number and size of existing sanctuaries were to double, the program would still be responsible for less than one percent of the exclusive economic zone of the United States.

Less than 1 percent. Can we not make at least this commitment to the future: that whatever fate management-as-usual may bring other marine areas, at least a few outstanding areas will receive

the extra level of care that may help them survive into the next century.

I close with our pledge to continue our support for revitalizing this unique and important marine conservation program. We look forward to working with you in the coming weeks in fostering this objective.

I thank you for considering our views, and am ready to answer any questions.

[The prepared statement of Mr. Weber can be found at end of hearing].

Mr. LOWRY. Thank you very much, Mr. Weber, for an excellent statement.

Mr. Palmer?

**STATEMENT OF MARK J. PALMER, EXECUTIVE DIRECTOR,
WHALE CENTER, OAKLAND, CA**

Mr. PALMER. Thank you, Mr. Chairman.

I've got a poster here.

Mr. Chairman, Mr. Herger, thank you for this opportunity to present a local look at the marine sanctuary program. I am Mark J. Palmer. I'm Executive Director of the Whale Center in Oakland, CA.

The Whale Center is a nonprofit conservation and education organization working for whales in their ocean habitat. And we've been very strong supporters of the marine sanctuary program for a number of years, helping with the establishment of the Channel Islands National Marine Sanctuary, and the Gulf of the Farallones National Marine Sanctuary.

I wanted to introduce you to the Gulf of the Farallones National Marine Sanctuary with our poster here that we developed in conjunction with the National marine sanctuary program there. These are the marine mammals that are found in the Gulf of the Farallones National Marine Sanctuary, with the beautiful paintings of Larry Foster and Pieter Folkens.

Our collaboration with the Gulf of the Farallones National Marine Sanctuary extends into other areas, and I do have some materials, including my statement, to submit for the record. These are studies on harbor seals and humpback whales, whale watching guidelines, and various other materials that have been put out by the National marine sanctuary for educational purposes to the public and for research purposes. So I'd like to submit those for the record, to give you an idea of the benefits the sanctuary gives to us in our local area.

Dr. Robert Schmieder is here today, although I don't know where he disappeared to. In any event, he is going to show you some slides of the Cordell Bank National Marine Sanctuary proposal. This is an area we've been working on recently. It's just to the North of the Gulf of the Farallones National Marine Sanctuary. If you look at my statement, there's a map on the back of there that will give you an idea of what the area looks like.

This is an incredible undersea mountain. It comes up within a few hundred feet of the surface. Jagged pinnacles covered by living gardens, if you will, of invertebrates. It is a spectacular, rather

unique area. One of the furthest north sea mounts on the California coast, and an extension, really, of the undersea ridge of the Gulf of the Farallones, which the current sanctuary protects.

We have had problems, and now I get into some of the problems we've had with the marine sanctuary program. Dr. Schmieder himself proposed the Cordell Bank as a National marine sanctuary in 1981. The proposal has dragged on since then. So far, we are in still the review stage. A draft environmental impact statement was released last fall by the marine sanctuary office. We feel that there are considerable concerns with the proposal that the marine sanctuary office came out with. The boundaries are way too small. They propose, as their preferred alternative, a three-mile diameter hole in the ocean, if you will, around the main mount area of the Cordell Bank. We feel the boundary should be substantially larger, being contiguous with the Gulf of the Farallones National Marine Sanctuary. It kind of fits in that hole up here in the left, if you will, of the sanctuary. It makes sense from a management standpoint. It makes sense from a regulatory standpoint.

Our second problem, and perhaps major problem, is the offshore oil provisions. There simply are none in the sanctuary proposal presented by the marine sanctuary office. The Cordell Bank proposal just simply notes that the Interior Department's 5 year plan places the core area of the sanctuary, that is the pinnacles themselves, off limits to offshore oil drilling for the duration of the 5 year plan, and there it sits. We feel this is not adequate. We feel that extensive protection should be given to this area from oil and gas exploration.

As I mentioned, this is still in the review stage. We're still in the draft stage, so perhaps the marine sanctuary office will do a better job once the final environmental impact statement comes out. But we do have considerable concern.

Oh, Dr. Schmieder has joined me.

Monterey Bay, to the south of this area, has been a place of concern to us as well. This is a spectacular area for marine mammals, marine birds. An underwater canyon, larger than the Grand Canyon, extending out from shore and quite close into shore, so you get a mixture of both shallow water species and deep water species. Unfortunately, Monterey Bay was dropped from consideration as a marine sanctuary candidate back in 1983. There has been a considerable effort by conservationists, by Congressman Leon Panetta, to revive this as a candidate area. To date, those efforts to revive it have been totally squashed. Therefore, we are very much concerned that Monterey Bay will never see the light of day at this stage.

We have then, a couple of different problems. What we see, foot dragging, perhaps ignoring sites that are important. There's a variety of sorts of things that can be done. We have two recommendations.

First is, congressional designation. We feel that Congress, if Congress steps in and starts establishing National marine sanctuaries, will do a number of beneficial things for the program. It's certainly going to give impetus to the program. It's going to raise the visibility of the program substantially, both within Congress itself, and perhaps a more proprietary interest in marine sanctuaries, but also

amongst the general public, if these areas come before Congress. It will stop, I think, a little bit of the foot dragging we've seen. Once it's designated, it's designated. It simply makes sense to us from a number of standpoints to have Congress step in and start designating National marine sanctuaries.

The second point, which Mr. Weber brought up, and which I concur with wholeheartedly, is the lack of funding. We really need better funding for the marine sanctuary program in terms of management of existing areas; in terms of establishing new areas, and going through the necessary steps that it takes to designate such areas, and develop management plans, and to establish the offices, the educational programs, the management regime for the new areas that we're looking at. So additional funding.

Let me conclude, Congressman, by inviting you and members of the committee to come out to California and go whale watching with us, Monterey Bay, Cordell Bank, Gulf of the Farallones. We'd be happy to take you out there, show you some of the inhabitants of that area. They're rather large, but they're a lot of fun.

Thank you very much.

[The prepared statement of Mr. Palmer can be found at end of hearing.]

Mr. LOWRY. Thank you, Mr. Palmer.

Mr. Archer?

**STATEMENT OF JACK ARCHER, SENIOR RESEARCH FELLOW,
MARINE POLICY CENTER, WOODS HOLE OCEANOGRAPHIC IN-
STITUTE**

Mr. ARCHER. Thank you, Mr. Chairman.

I'm going to submit my written testimony and very briefly summarize several major points. And then if I may, I'd like to comment on a couple of points that the administration witness raised earlier.

The first point concerns one issue that I think the committee should address. It has to do with how many sanctuaries we're going to have, and what sort of program we're going to operate. The statute is open ended. The policy that the statute establishes is that we're going to protect ocean areas of national significance: resources and uses of the ocean that are either unique or outstanding on a set of criteria established by the Maine Sanctuaries Act.

Now, I think that open-endedness was quite deliberate, but it has caused a problem. And we've seen that problem over the past many years, where we have had very little progress in the administration of the program to designate new sanctuaries. I would suggest that the Congress set a goal for itself, or a goal for the administration during the next reauthorization period. And I think, in line with recommendations from Michael Weber, that it would be entirely reasonable to require that four or five new sanctuaries be designated during this period.

Also I think it would be important to express to the administration a certain degree of impatience with finishing the designation of the three candidate sites. Flower Garden Banks has been hanging around for more than 10 years. Cordell Banks has been in the works for more than 5 years. I don't think that delay can be ex-

plained by any of the reasons I've heard advanced here today. We've had an indication of a willingness to proceed rapidly, and I do accept the good faith of those witnesses; nonetheless, Federal officials change from time to time. I think it's important that the Congress specify what it wants done and the time frame that it wants it done in.

But talking about the size of the program and how many sanctuaries that we're going to have raises the question of funding. Those questions are very clearly linked. And I think that you address the second issue, and that is, how much money we are going to spend on marine sanctuaries, by deciding how many sanctuaries we are going to have over this next period. If the decision is that we're going to have five new sites in addition to the two or three candidates sites, then I think NOAA can tell the committee exactly, or within reason, what it costs to designate those sites. And therefore the authorization figure would be pegged toward operating the existing system, and then carrying these new sites through the designation process.

A word or two about costs. It's obvious to all of us that we spend vastly more to manage terrestrial resources. The National Park Service spends more than \$700 million in the current fiscal year. It manages something like 350 sites. The sanctuaries program is seven sites, three candidate sites, and its operating budget is less than \$2.5 million. I think those figures speak volumes about our, I'm sorry to say, lack of commitment to protecting these resources. And I know of no one who would tell this committee that it's more important to protect land resources than it is to protect ocean resources.

Again, on the issue of costs, although at the risk of being laughed down, I would propose that we give some consideration to funding this program out of OCS oil and gas revenues. To my mind there's a very clear link between exploiting oil and gas resources and protecting other ocean resources. Some of those resources are put at risk by oil and gas development. And that's very clear in the Santa Barbara Channel.

The other point that I wanted to talk about concerns the sanctuary designation process. It has been said that this process is too complicated. It may be, but we don't really know because NOAA has not yet carried a site through the designation process. Now, I have one recommendation that would, I think, at least put an outside limit on the length of time that it takes to designate sites. And I would suggest that you consider establishing a statutory deadline from the date which NOAA designates a site as an active candidate for sanctuary designation. And I would suggest 18 months at the outset, possibly 24 months, would be a reasonable time frame. I seriously suggest that the committee consider that amendment.

The two points that I wanted to respond to have to do with NOAA's authority to protect cultural and historical ocean resources. Basically we're talking about shipwrecks. And the recommendation was, from the administration, that the Congress provide that the Federal Government has a title interest in these resources. Now I'm not totally opposed to that, but I have to point out certain pitfalls.

First of all, we have to be specific about what area of the ocean we are talking about: the territorial sea, the contiguous zone, the exclusive economic zone, or even beyond, the deep sea bed. There is an important source of international law that we have to look at. Now, the United States, when it proclaimed its exclusive economic zone, declared sovereign rights and control over the resources of the EEZ, but we were very careful not to assert title or ownership interest in these resources. The thought that NOAA would now seek title to this class of resources, that's a very interesting suggestion, but certainly we could not proceed with that unless we had the backing of the State Department. I think that's an issue that we could quarrel about for the next 10 or 15 years.

I suggest, however, that we don't need to do that. We already have sufficient authority over this class of resources, consistent with international law, to do what we need to do to protect these resources. You have a very competent legal staff, and the resources of the CRS. I think this issue could be researched in some depth. But I would say, first of all, if we claim an ownership interest in such resources, we're going way beyond what we've ever claimed before. That doesn't mean necessarily that we shouldn't do it, but it will be very divisive. But the most important point that I want to make is that we don't need to do that; we have sufficient authority already. The Marine Sanctuaries Act itself gives us authority to protect and preserve these resources consistent with international law. So I don't think we need to be deterred too much by that question.

The other statement was to the effect that the Site Evaluation List would be reopened. I'm not opposed to doing that either. But, we've had such a list for the last 5 years. NOAA has yet to designate a site from that list as a sanctuary. Now it has acted on one or two of the other sites, but it certainly hasn't anywhere near exhausted this list. It's a list of 30-some odd sites. I would just be very careful about pouring resources into expanding a list that NOAA is not going to act on. It doesn't get us anywhere. So if they are going to do that, then I think they ought to come in and specify how much money they want to do it. And that's an add-on to their current budget request.

And finally, I would observe that level funding loses the ball game. Level funding declines each year. We always have a lower level. You cannot designate new sites, manage existing sites, and carry out an effective research component to this program. I've not heard research mentioned yet in this hearing. Research is important in the Marine Sanctuary Program. It is authorized by the act. I'm not talking about normal academic research or pure research. I'm talking about research that aims at resource management issues, very important issues to the program. And I think that NOAA should come up with a component in its budget for that kind of research.

In any event, Mr. Chairman, I think we're talking about a program that is at least funded at considerably above—I can't give you a specific figure—but it certainly is going to be more than the \$2.5 million or so that they're going to seek this year.

And that concludes my testimony.

[The prepared statement of Mr. Archer can be found at end of hearing.]

Mr. LOWRY. Thank you, Mr. Archer, for some very helpful suggestions, as we move toward markup.

Mr. SCHMIEDER, would it have been better if I'd called on you right after Mr. Palmer? Perhaps it doesn't make any difference. But if you would care to proceed ahead, please.

I'm sorry we started when you were out of the room. It was my fault for getting back late.

Mr. SCHMIEDER. No, it was my fault for not realizing you are proceeding so quickly.

Mr. LOWRY. We call it congressional time.

STATEMENT OF BOB SCHMIEDER, FOUNDER AND EXPEDITION LEADER, CORDELL BANK EXPEDITIONS

Mr. SCHMIEDER. Thank you, Mr. Chairman, and members.

It is a very great privilege for me to have the chance to come here and speak. I'm not in a policy making or political position. I'm a scientist. I spend a lot of time in the ocean. I've spent a lot of time on one of the candidate sites, namely Cordell Bank. And so I've talked to the sponges a lot, and I've seen them a lot.

My purpose in being here is to convey to you the fragility of this resource, and I assume the same is true with other resources. Stellwagen Bank has been mentioned, Flower Garden Banks, and other sites are similarly fragile. There is also a time factor in that fragility. These are sites that are at risk. And so I would like to urge you to consider incorporating both the dangers and the time factors of these sites in considering which are to be designated and the funding level for designating them.

Besides that, I've brought a few slides that show what Cordell Bank looks like. Not everyone has a chance to see what it is. With the Chairman's permission, could I show those?

Mr. LOWRY. Surely.

Mr. SCHMIEDER. Is it possible to dim the lights?

[Showing slides.]

Mr. SCHMIEDER. I'll run through these quickly, please interrupt me.

This is a computer image of Cordell Bank. This is what it would look like if you could drain the ocean away and look at it hovering over in a helicopter. It looks a lot like the land, like land images.

These images were generated on a micro computer by a colleague and myself under contract with NOAA. The resolution here is 4 by 4 meters, far greater resolution than you see here. So we can zoom in and see a lot of detail. This is how well we now know the topography of this particular area. And it's how well we could and should know, eventually, all of the national marine sanctuary sites. The dimensions here are about 9 miles long and about 5 miles wide. So this particular site is rather large.

With the computer we can do a lot of enhancements. This was the very first image, a photo mosaic we generated in which the orange color is the shallowest, the yellow is deeper, green is deeper still, and the blue is deeper still. It's just one example of how we

can enhance these kinds of images and from these see features that can't be seen with other rudimentary techniques.

Here's a similar image that just outlines areas of a certain depth level. Here we're looking for certain depth contours. There are lots of ways to manipulate the data once it's accumulated. By the way, these data were accumulated from the EEZ survey in 1985, part of the NOAA corps operation.

Here's another way of imaging it. It almost looks like a photograph, but it's not. This is still a computer image. We generated this and a related set of images to use when we actually went out on our boat and went diving and located that particular spot. Those are high points. That's about a football field long, the distance between those two peaks. These images were essential to locating it and ultimately when we dived on it.

You can look at it up a little closer. This is what the computer can do for us now. By the way, this is the state-of-the-art. These are the best images of any comparably mapped site in the world. That's how good the EEZ data is.

We have our own research vessel, which has been associated with Cordell Bank Expeditions for 10 years. Now that Cordell Bank is about to be designated a sanctuary, we're going up and down the coast into other places.

Here's some of the gear we use. This is an ROV, a remotely operated vehicle. It's a little submarine about the size of a breadbox with a television camera on it. We can sit comfortably on board, look at a color TV monitor, while this thing wanders around the bottom and gives us back pictures. We expect to be able to really extend our reach with this device. They're a little expensive, so we've just borrowed them so far.

Here's a few pictures of the bottom. It's a very typical scene. You see it's very busy. It's covered with all manner of organisms. Everything you see here is an animal. There's not one plant in this picture, that you can see. Even those weedy-looking things are animals. And the diver, of course, is an animal.

Here is myself on the very shallowest point on Cordell Bank. It's 114 feet deep at this point. The water is so clear above us, that we never take dive lights, even at depths of 160, 170, 180 feet. We've even been down to 220 feet, and we've never taken any lights. The photographers do take strobes for their cameras.

Here is a very typical scene. This is the California hydrocoral. This is a federally protected species. It's also a key species on Cordell Bank and several other banks. It grows very slowly. It's very fragile. Many organisms live on it, they depend upon it, and it's also one of the most vulnerable. It sticks up on the tops of the ridges. Can you imagine a boat dragging something across and shearing this off. This colony would take 25 years to grow.

You see how many other organisms depend on that hydrocoral. Here's a closeup of it. It's a colony of many, many, hundreds, thousands of animals.

This is the weedy-looking stuff. This again is a colony of animals. It's a hydroid. And you see how many other things live with it—how busy this is. It is so productive an environment that all manner of animals and plants clump together in a very complex, very jumbled array.

These are sponges. The little fringes on the top are due to diatoms, microscopic plants that have been caught on them. The hydrocoral again. There are a lot of anomenes. The gray thing on the hydrocoral that looks like a sponge, is not a sponge. It's a tunicate. It's rather high taxonomic level, you could say it's a rather intelligent animal, since it has a rudimentary nervous system.

Here is an urchin, which seems to be eating this sponge. The environment looks very benign, but of course it's a raging war going on all the time. To the animal kingdom, to the plant kingdom, it's violence at the level of survival.

There are a lot of fish there. I'm sorry you can't see this very well. What look like just water splatters on the picture are individual fish. Sometimes the fish are so numerous we can't even see our dive buddies 10 feet away. Of course, you have to have a lot of little fish to have a few big fish. There are a few bigger fish.

And here's one of the larger fish, a rockfish, a yellow-eye rockfish. They're very common. This is a major fishing ground, as are several of the other sites, Stellwagen Bank is also a major fishing ground.

We haven't found many artifacts. That's because the area grows so quickly, that any piece of junk that arrives from the surface is rather quickly encapsulated under the biological cover. This was one artifact we did find. It's a hole.

Here's another picture of actually a different hole. This was drilled into the hardrock granite in the mid-1960's by the U.S. Navy, that carried out some type of underwater communications project. It's still secret, and even though I have a security clearance, I am unable to even find out what they did.

So in conclusion, this particular site, Cordell Bank, is an island. It is like a museum. It should be treated as such. It should be protected and it certainly symbolizes the other sites within the National Marine Sanctuary Program.

Thanks very much.

Mr. LOWRY. Thank you, Mr. Schmieder. That was very enjoyable.

Mr. Palmer, or Mr. Schmieder, or whoever else would care to respond. What is the danger to Cordell Bank that would require, or you would suggest it being put into a sanctuary status.

Mr. PALMER. There are several benefits, of course, from having it a marine sanctuary; coordinated approaches to research, public education. It is in addition to the underwater scenes you've seen, and the unique bottom fauna, also a major feeding area for endangered species like the humpback whale and the blue whale. So there are a variety of things, if you will, it extends up from the Gulf of the Farallones Marine Sanctuary as a feeding area, and a variety of marine birds as well.

So we are seeking to protect these resources, the kinds of damage possible. One of the sanctuary protections proposed is to prevent any construction on the sea floor, and also to prevent removal of organisms by divers, for example, or whatever, to protect these areas. As Dr. Schmieder said, the underwater fauna is quite unique, and also quite fragile and takes quite a long time to recover.

The major concern we have along the California Coast, and you've probably heard it before, is the problems with offshore oil

drilling, both inside the particular area. On the map that I've presented in my testimony, you can see some of the proposed lease areas during the Carter Administration, which were never actually leased to the oil companies, which completely surround the bank area. We don't think there's much in the way of oil resources there, because the geology isn't right, but the oil companies are still interested.

Then there's a problem further north. There are potential problems, if there are oil spills in potential areas there, such as the Mendocino Basin, that the Department of the Interior is looking at as a possible lease sale, as part of Lease Sale 91. And as I say, the current proposal for the marine sanctuary does not include a restriction on underwater OCS activities, which is quite different from the Channel Islands and the Gulf of the Farallones National Marine Sanctuary, which do ban oil and gas activities within their boundary.

Maybe Dr. Schmieder has something to add to that in terms of the particular threat.

Mr. LOWRY. Just sticking to the question of the threat from oil exploration north of the proposed boundary. Would you envision that there would be a capability for mitigation of that within this Act?

Mr. PALMER. That's part of it, both mitigation and also response—some kind of response team in case there were a spill to go out there and try to deal with.

Mr. LOWRY. Emergency response.

Mr. PALMER. Obviously, that's after the fact, and it's a difficult sort of thing to clean up, but it is a protection we're looking at that would be useful.

Mr. LOWRY. But you would look at the prohibition of oil and gas exploration within the sanctuary—

Mr. PALMER. Right.

Mr. LOWRY [continuing]. Or marine reserve, if that becomes the term?

Mr. PALMER. Right.

Mr. LOWRY. But then a way to handle an outside of the boundary accident, or problem with oil and gas exploration?

Mr. PALMER. That's correct.

Mr. LOWRY. Aside from oil and gas exploration, again, because it was so interesting sitting and looking at those pictures. What other dangers do you see aside from oil and gas exploration that are actually a reality of the present or in the foreseeable future?

Mr. SCHMIEDER. May I?

Yes, I can give you one other example. In the past few years in California, Northern California, we've been struggling with the issue of gill nets and overfishing. And from my own observations in the field, I've been able to see that there was, in 1984 and 1985, a decrease in the number of rockfish on Cordell Bank. I think this was associated with larger takes of fish, principally due to larger numbers of fishing vessels operated by Asian fishermen. This is being very specific about this issue, but it's exemplary of the kind of problem.

Within 2 or 3 years of that kind of pressure, Cordell Bank would be empty of fish. And it seemed to me to be kind of a race between the legislative remedies and the fishermen.

Mr. LOWRY. And the Fish Management Council process must not be addressing this, if your observation is correct.

Mr. SCHMIEDER. No, it doesn't affect the rockfish fishery. We did get a ban through the State legislature on gill nets, north of Point Reyes, which includes the Cordell Bank.

Mr. LOWRY. That's a very good example of why designation is argued for.

Could Mr. Weber, or Jack, either of you, address why we should be having specific designation within legislation, Congressional designation, as opposed to the Site Evaluation List, and the Department then moving ahead with that process? It seems that a process by which a department went ahead and made selection might be better than Congress in clumsily designating selected areas around the Country. On the surface it would seem that the other would be a better process.

Mr. WEBER. I believe that in 1984 Congress provided very clear guidance to the administration on what criteria it should use in selecting sites, and indeed Congress, to a large extent, adopted the procedures that the program had developed over the preceding one or two years. And I believe that that process is a good process that allows for the selection of outstanding candidates.

What is missing, however, is the other end of the bargain, which is that the process needs to move ahead. For the last 4 years, we have been deferential to the administration making progress in designating sites. And as you may recall, during the last reauthorization, there was consideration of congressional designation. And at the time we were quite concerned that this be a matter for which the administration exercise responsibility. I frankly think that the administration has abused the deference that Congress has shown to its judgment.

At this point, I am of the opinion that providing the administration with a date by which certain sites must be designated, would provide the impetus that the Administration apparently needs to get these sites processed and would at the same time allow the Administration to use its judgment in the development of management plans.

Mr. LOWRY. Mr. Archer, would you care to add?

Mr. ARCHER. Well, I don't have any problems with Mr. Weber's recommendations, except that I think that you can say that although we don't know if the process won't work, we know that it hasn't worked. By establishing these deadlines, that Mr. Weber's talking about, or if you consider the kind of amendment that I suggested earlier, that would certainly help, because it makes the process more specific, and we know what the agency is supposed to do.

We have lodged a great deal of discretion in the administration. I also believe that this discretion has been abused. I think you ought to take some of it back along the lines we've talked about earlier. But it is possible to put together a combined process. For example, the normal process could be that which is embodied in the 1984 amendments, and as you may choose to improve it. But suppose

that we have another Administration that spends the money mostly on program activities, but no designations take place? Why not allow the possibility of congressionally initiated designation, perhaps limited to the sites that are on an approved list? If there is substantial support for that designation and the agency is not proceeding, why not some sort of a mechanism whereby the Congress could take the action into its own hands?

By the way, we designate refuges. We designate parks by legislation. It's not unheard of. And in fact, it's the normal rule. So I think you could put together a process that allows this as a way of dealing with an Administration that is just simply dragging its heels.

Mr. LOWRY. Mr. Archer, while you have the microphone, there is introduced legislation for the purposes of beginning the discussion. It's a \$3 million authorization. Do you think that would be adequate? Is that an adequate level for additional designations, the \$3 million that we've introduced?

Mr. ARCHER. Well, on the assumption that we can operate the program as it is with something like \$2 million, then it's difficult to say that \$3 million isn't enough. I think I would prefer to go back to my earlier point, that if you choose to set a certain number of new sanctuaries that will be dealt with, NOAA can provide you with the cost, plus a normal escalator factor, I think, over four or five year period, that would tell you what program costs should be.

But bear in mind that we authorize and then we appropriate, and we still have that battle to fight. If we say that these sanctuaries have to be designated, and I do very much like the proposal that you attach dates to the designations of certain sites, then I think we're in a much better position to get the appropriation.

Mr. LOWRY. Thank you.

Mr. Weber, could you prioritize the sites that you suggested in your testimony?

Mr. WEBER. Well, the priorities that we would set are based upon a recent review that we've conducted of sites in the Eastern Pacific. The three high priority sites for us at this point are Monterey Bay, outer coast of Washington, and northern Puget Sound. We are assuming that Cordell Bank, Flower Garden Banks, and Norfolk Canyon will be designated as a matter of course. But in terms of where the program grows after that, those three sites are the sites that we would like to see very much moved ahead.

Mr. LOWRY. OK.

Thank you.

That was one of the reasons we had the testimony set up the way we did, and in looking into the question of concessions within the marine sanctuary program. I believe you were here when I was asking the gentleman from the Park Service about their experience in being able to protect the resource while going through this, and you heard that line of questioning.

After hearing that line of questioning, what are your concerns with moving to a private concession type of approach within the sanctuaries?

Mr. WEBER. My concerns are that I have not yet heard a compelling case made for the desirability of doing that. I was particularly struck by the comments of the witness from the National Park

Service about the elaborate process and program they've had to build in order to deal with concessions in National Parks. I look at that and have to be very, very concerned that this will be yet another activity that will drain the meager coffers of this very, very small program. If the National marine sanctuary program had a budget of \$700 million, I would be less concerned. But with a budget of \$2 million or \$3 million, even \$4 million, I have to be very concerned at complicating life for sanctuary management.

Mr. LOWRY. Financial resource concern?

Mr. WEBER. Yes.

Mr. LOWRY. Do you have an addition? I, myself, was concerned about any sort of a pressure that might actually be endangering the natural resources. I liked the answers that the gentleman from the Park Service was giving me, but is your primary concern that you're stating now the financial resources?

Mr. WEBER. Well, I have a similar concern that introducing a concession authority into the sanctuary program at this point will set up a dynamic in which concessions are allowed because they generate money, and we're always looking for money to run sanctuaries. After a certain point you start cutting corners with protection, I think, inevitably. And while I am open, certainly, to further discussion about this (and the testimony from the representative of the National Park Service was very, very useful), I think concession authority could turn into a quagmire, to set up a system that would provide for protection.

Mr. LOWRY. I certainly would appreciate it over the next month or so, if we could have some continued communication on this concern before we move to markup.

You mentioned in your testimony the possibility of gifts going to the program. That is prohibited now?

Mr. WEBER. I understand that NOAA attorneys do not believe that they have clear authority for accepting gifts. And when I talk about accepting gifts of goods and services, what I'm talking about specifically are the sorts of gifts and services provided by associations such as those that conduct educational activities in support of National Park sites. And at this time, the authority is cloudy enough that it's very, very difficult to mount any kind of a community support activity for any individual sanctuary.

It's not a major concern, but it is a concern, nonetheless, that if solved, can, I think, lead to generating considerable community support for individual sites.

Mr. LOWRY. Thank you very much for that suggestion. I mean, and that's something we will look very closely at over the next month.

Gentlemen, thank you very much for very helpful testimony. Again, as I stated at the beginning of the hearing, it is our intention to hold a markup on the 19th of May. We more than welcome any additional input and communications that you could help us with on that.

Thank you very much.

The hearing is adjourned.

[Whereupon, at 4:15 p.m., the subcommittees were adjourned.]

[The following was submitted for the record:]

100TH CONGRESS
2D SESSION

H. R. 4208

To authorize appropriations to carry out title III of the Marine Protection, Research, and Sanctuaries Act of 1972 during fiscal years 1989, 1990, 1991, and 1992.

IN THE HOUSE OF REPRESENTATIVES

MARCH 21, 1988

Mr. LOWRY of Washington (for himself, Mr. JONES of North Carolina, Mr. STUDDS, Mr. FASCELL, Mr. ALEXANDER, and Mr. HUGHES) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To authorize appropriations to carry out title III of the Marine Protection, Research, and Sanctuaries Act of 1972 during fiscal years 1989, 1990, 1991, and 1992.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of Americc in Congress assembled,*
- 3 That section 308 of the Marine Protection, Research, and
- 4 Sanctuaries Act of 1972 (16 U.S.C. 1438) is amended by
- 5 inserting at the end thereof the following:
- 6 “(5) \$3,000,000 for fiscal year 1989.
- 7 “(6) \$3,500,000 for fiscal year 1990.
- 8 “(7) \$4,000,000 for fiscal year 1991.
- 9 “(8) \$4,500,000 for fiscal year 1992.”.



**GENERAL COUNSEL OF THE
UNITED STATES DEPARTMENT OF COMMERCE**
Washington, D.C. 20230

07 JUN 1988

Honorable Walter B. Jones
Chairman, Committee on Merchant
Marine and Fisheries
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter provides the views of the Department of Commerce on H.R. 4208, the

**"National Marine Sanctuaries Program Authorization
Act of 1988,"**

as amended May 24, 1988, by two Subcommittees of the House Committee on Merchant Marine and Fisheries.

Although there are portions of H.R. 4208 which we consider favorably, the Department of Commerce opposes the bill unless it is amended as set out more fully below.

Section 2 of the bill would amend Section 304 of the MPRSA to modify the sanctuary designation process by reducing the length of the process to two and one-half years. DOC opposes this section as unworkable on the basis that sanctuary designation has been shown to require an average of about four years to allow time to meet requirements of the MPRSA, the National Environmental Policy Act, and the regulatory review process.

Subsection 3(a) of the bill adds new sections numbered 309 through 313 to the MPRSA, on promotion and coordination of research; special use permits; injury to destruction or loss of sanctuary resources; and acceptance of donations. Subsection 3(b) authorizes the Secretary of Commerce to enter into cooperative agreements with nonprofit organizations to carry out certain purposes of the MPRSA. Subsection 3(c) requires the Secretary to report annually to Congress, starting not later than 12 months after the bill's enactment, on DOC activities related to implementing the amendments made by section 3.

DOC supports new sections 309, 312 and 313, and the cooperative agreement authority provided by subsection 3(b) of the bill. As to the new section 310, on special use permits, DOC recommends revising subsection (f) to read "Nothing in this section shall be considered to require a person to obtain a permit under this section for the conduct of any fishing activities not regulated by the site specific regulations of a national marine sanctuary."

The purpose of this change is to ensure that sanctuary regulations on fishing are not overturned by the amendment. DOC also recommends that it be made clear, either in section 310 itself or in the bill's legislative history, that regulatory permits may continue to be issued.

DOC strongly supports the purpose of new section 311 to the extent it permits the Government, in the event of injury, destruction, or loss to marine sanctuary resources, to recover the value of the damage to the resources from the responsible parties. However, the exception from liability contained in subsection 311(a)(3)(B) which exempts all activities "authorized by Federal or State law" is too broad since virtually all activity that might cause damage -- navigation, fishing, diving -- are generally authorized by law unless specifically prohibited. We recommend revising this exemption to read "(B) the injury or destruction of the sanctuary resource was specifically authorized by Federal law." We do not believe that States should have the ability to authorize destruction of sanctuary resources that are located in the exclusive economic zone and have therefore omitted that possibility in the suggested revision. Also, we oppose using recovered funds for sanctuary management purposes because this bypasses the normal authorization and appropriation process. In addition, section 311 should be amended to provide for the deposit into the general fund of the Treasury amounts received as civil penalties which are in excess of reasonable costs.

The Department of Commerce opposes both sections 4 and 5 as fundamentally inconsistent with the existing designation process, which is working well and should not be overridden. Section 4 requires the Secretary of Commerce to designate three sites as marine sanctuaries. Of these sites, one was removed as a candidate for designation because two other sanctuaries in the area protect similar resources and the large size of the proposed sanctuary would not produce benefits of sufficient value relative to the cost to administer it. The remaining sites under section 4 are already active candidates. Thus, requiring designation in this bill is unnecessary.

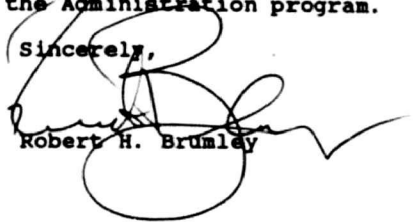
Section 5 of the bill identifies specific areas to be studied for possible designation as marine sanctuaries. Some of the areas identified are not on the Sanctuary Site Evaluation List (SEL). The appropriate time to consider sites for inclusion on the SEL is during the public comment period. We plan to initiate such a comment period shortly. If these sites warrant further study, they will be identified and the sites' resources will be subjected to scientific assessment.

Section 7 would authorize appropriations for fiscal years 1989 through 1992, at levels which exceed those proposed by DOC. DOC supports reauthorization at a level of \$2.325 million for FY 1989 and such sums as may be necessary for FY 1990.

Section 101 of the bill would amend section 307 of the MPRSA to authorize seeking equitable relief whenever the Secretary determines that there may be an imminent risk to the resources of a national marine sanctuary. DOC supports this section.

We have been advised by the Office of Management and Budget that there is no objection to the submission of this report to the Congress from the standpoint of the Administration program.

Sincerely,



Robert H. Brumley



U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

JUN 7 1988

Honorable Walter B. Jones
Chairman, Committee on Merchant
Marine and Fisheries
House of Representatives
Washington, D.C. 20515

Dear Chairman Jones:

This letter conveys the comments of the Department of Justice on H.R. 4208, the National Marine Sanctuaries Program Authorization Act of 1988, as well as on amendments to be proposed by Congressman Studds to that bill.

1. Comments on H.R. 4208: The Department has several comments on section 6, the enforcement section of the bill. Our primary concern with these provisions is that there be relative uniformity among the federal environmental laws on the same issues. For this reason, we urge the Committee to amend section 6(a) to conform with provisions of the Magnuson Act as follows: the amendment to Section 307(c)(3) of the Marine Protection, Research and Sanctuaries Act (MPRSA), on in rem proceedings, should conform with the Magnuson Act, 16 U.S.C. § 1858(d); the amendment to 307(g), on jurisdiction, should conform with 16 U.S.C. § 1861(d); and the amendment to section 307(b)(1)(C), on seizure, should conform with 16 U.S.C. § 1861(b)(1)(A)(v) (evidence "related to any" violation). In addition, we suggest that the Committee add a provision allowing for the payment of a bond to retain custody of seized property, which is consistent with other laws, see 16 U.S.C. § 1860(d)(1), and adds flexibility in appropriate circumstances where it would be burdensome for the government to retain possession of the property. Finally, the amendment to section 307(c)(4), which provides for service of complaints on the Secretary or United States Attorney, should also include service on the Attorney General of the United States.

2. Comments on Amendments by Congressman Studds: As a preliminary matter, in the absence of any statement of purpose, the objective of the amendments is not clear. From the text, it is possible that the concerns addressed in these amendments may

be protected by current law, including section 311 of the Clean Water Act, 33 U.S.C. § 1321 (Oil and Hazardous Substance Liability) and the Comprehensive Emergency Response, Compensation and Liability Act, (CERCLA), 42 U.S.C. § 9601 et seq. If the objective of the amendments is to address problems not adequately covered by these and other statutes, that purpose should be stated; if not, the amendments may be unnecessary. In addition to this general statement, we offer the following, more technical, suggestions and comments.

As noted above, there may be other laws which generally provide authority to address the risks which are the object of the amendments; therefore, we suggest that the phrase "Notwithstanding any other provision of law" be inserted at the beginning of section 101 amending section 307(j).

Many of the amendments appear to be based, at least in part, on the provisions of CERCLA. In the interest of consistency, as well as preserving the current program under that statute, we suggest that certain provisions in these amendments be changed either to conform with or be distinguished from CERCLA. Thus, we recommend that section 102, amending section 311(a)(1), be amended to conform with CERCLA, through the following changes "... any person or vessel who ~~destroys or causes~~ contributes to the loss of or injury to any sanctuary . . ." It should also be made clear either in the statute or in its legislative history that liability shall be joint and several where the harm is indivisible. We also suggest that the amendment to 311(a)(3) should be changed as follows to conform with section 107(b)(3) of CERCLA,

311(a)(3) . . . an act of war, an act or omission of a third person ~~if the person or vessel acted with due care other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly with the defendant, if the defendant establishes by a preponderance of the evidence that (a) he exercised due care taking into consideration all relevant facts and circumstances, and (b) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions.~~

Section 311(c)(2) should be amended to provide for nationwide service of process, see CERCLA section 113(b). Finally, with respect to conformity, we observe that the amendments distinguish between response costs, damage assessments and restoration funds. It appears that response costs under the amendments is not intended to be the same as under CERCLA. Therefore, to clarify the distinction, we suggest that the term "short term response"

costs be used instead and that "short term response costs" be defined.

The section amending 311(c)(1) states that the Secretary shall commence a civil action for recovery of response costs and damages. Since the authority to sue in district court lies only with the Attorney General, see 5 U.S.C. § 901 and Executive Order 6166 at section 5, the following underlined amendment should be made: shall may request the Attorney General to commence a civil action in the appropriate United States district court for the appropriate district court. Similar amendments should be made to section 101, adding new section 307(j) ("the Secretary may require request the Attorney General of the United States to secure such relief"); section 201(c)(a) (same as 311(c)(1)); and 202 (same as 101). For the same reason, the proposed amendment to section 307(c)(6), which authorizes the Secretary to compromise a civil penalty, should provide for the concurrence of the Attorney General of the United States.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,



Thomas M. Boyd
Acting Assistant Attorney General

ONE HUNDREDTH CONGRESS

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U.S. House of Representatives Committee on

Merchant Marine and Fisheries

Room 1334, Longworth House Office Building
 Washington, DC 20515-6230

April 15, 1988

MEMORANDUM

TO: Members, Subcommittee on Oceanography and
 Subcommittee on Fisheries and Wildlife Conservation
 and the Environment

FROM: Subcommittee Staff

RE: Reauthorization of the National Marine Sanctuaries
 Program

INTRODUCTION

On Friday, April 19, a joint Subcommittee hearing will be held in Room 1334 Longworth regarding the reauthorization of Title III of the Marine Protection, Research and Sanctuaries Act (33 U.S.C. 1431-1439), more commonly known as the National Marine Sanctuaries Program. Witnesses include representatives from the Administration, both the National Oceanic and Atmospheric Administration (NOAA) and the National Park Service (NPS), as well as representatives from the environmental and academic community.

BACKGROUND

Title III of the Marine Protection, Research and Sanctuaries Act (MPRSA) authorizes the Secretary of Commerce to designate nationally significant areas of the marine environment (including the Great Lakes) as National Marine Sanctuaries. These areas are selected on the basis of their ecological, conservation, educational, historical, aesthetic, recreational, or research value. The National Oceanic and Atmospheric Administration (NOAA) is responsible for implementing provisions of Title III and does so through the Office of Marine and Estuarine Management.

Distinctive and important marine and Great Lakes habitats, species, and ecosystems are among the resources that may form the basis for marine sanctuary designation. Marine sanctuaries can be especially advantageous in areas where protection and beneficial use of these resources requires comprehensive, geographically-oriented planning and management. Marine sanctuaries are not necessarily pristine areas where human activities are severely restricted or excluded, as may be implied by the term "sanctuary." However, the primary objective of any sanctuary designation is resource protection and

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human activities are regulated to the extent that they threaten the distinctive characteristics which prompted the sanctuary proposal.

EXISTING SANCTUARIES

Marine sanctuaries may be designated in U.S. waters seaward to the outer limits of the U.S. Exclusive Economic Zone and inland to where the tide ebbs and flows, or they may be designated in the Great Lakes. At present, there are seven National Marine Sanctuaries:

- (1) The MONITOR, an area one square mile in diameter surrounding and including the wreck of the famous Civil War ironclad vessel off Cape Hatteras, North Carolina;
- (2) Key Largo, a 100-mile square mile section of coral reef tracts of the Florida Keys, south of Miami;
- (3) Channel Islands, a 1,252 square mile expanse encompassing the waters surrounding the five Channel Islands, offshore Santa Barbara, California, which contain pupping grounds for numerous marine mammals and nesting areas for seabirds;
- (4) Gulf of the Farallones, a 948-square mile marine area just north of the Channel Islands National Marine Sanctuary, which also contains breeding grounds for sea otters, seals and seabirds;
- (5) Looe Key, a 5-square mile lower section of the Florida Keys;
- (6) Gray's Reef, a 17-square nautical mile, live bottom coral area, east off Sapelo Island, Georgia; and
- (7) Fagatele Bay, a 165-acre site off Tutuila Island in American Samoa containing significant marine habitats including examples of Western Pacific corals and a deepwater coral terrace formation.

NOAA plans to designate at least three other sites in the next two years, including: (1) Cordell Banks, the northernmost seamount on the California continental shelf; (2) Flower Garden Banks, the northernmost shallow water tropical reef located 115 miles off the Texas-Louisiana coast; and (3) Norfolk Canyon, a submarine canyon 60 miles east of Virginia containing large tree corals and "pueblo villages"--assemblages of large invertebrates and finfish.

SITE DESIGNATION PROCESS

NOAA has proposed regulations to implement the 1984 amendments to Title III. Although these regulations are not yet final, following is a description of the sanctuary designation process as proposed in these regulations. (See Attachment I)

I. Step One: The Site Evaluation List (SEL)

- A. The SEL established by NOAA in 1983 (See Attachment II) included the most qualified marine and Great Lakes underwater areas recommended by regional evaluation teams. Criteria used for placing a site on the SEL include the following:
- (1) the site is representational of the biogeographic subregion in which it is located;
 - (2) the site is significant in relation to the region's ecological communities;
 - (3) significant biological productivity;
 - (4) the site supports ecologically limited species, ecologically important species, or unique species associations or biological assemblages;
 - (5) the site is important to the species maintenance, including special feeding, courtship, breeding, nursery, migration or wintering grounds.
 - (6) the site has special chemical, physical or geological habitat features;
 - (7) the site contains fishery resources of recreational or commercial importance;
 - (8) the site contains exceptional natural resources and features which enhance human appreciation, understanding and enjoyment of nature;
 - (9) the site provides exceptional opportunities for research, or to interpret the meanings and relationships of special marine resources to increase understanding, appreciation and wise use of the marine environment;
 - (10) the area contains or is likely to contain artifacts of special historical, cultural or paleontological value; and
 - (11) other factors such as potential impacts of activities, insufficient management, optimum management size, accessibility, surveillance and enforcement, and economic considerations.
- B. The sites listed on the current SEL are reexamined after five years.
- C. New sites are added only if these sites are important new discoveries or if substantial new information previously

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unavailable indicates that the site has national significance.

II. Step Two: Active Candidates

- A. NOAA selects a small number of SEL sites as "active candidates" for actual designation. These areas are selected after consultation with Federal, state and local agencies, and regional fishery management councils.
- B. Criteria used to select "active candidates" include:
 - (1) the site's relative contribution to the National Marine Sanctuary Program's missions and goals;
 - (2) the need for immediate action based on present or potential threats to the site's resources, and the vulnerability of these resources;
 - (3) the benefits to be derived from sanctuary designation, including an assessment of the site's natural resource and human use values, and the adequacy of the current management of the area;
 - (4) the feasibility of the sanctuary designation, including size, management requirements, program staffing, and fiscal restraints; and
 - (5) an initial consideration of the economic impacts and benefits of sanctuary designation, including the public and private uses which may be consistent with sanctuary designation.
- C. After selection as an active candidate, a site generally must be recommended for designation within 3 years.

III. Step Three: Designation Process

- A. After selection as an active candidate, NOAA prepares a prospectus for the proposed sanctuary which includes (1) a draft sanctuary management plan; (2) a draft environmental impact statement (DEIS); and (3) proposed regulations. These documents are transmitted to the Senate Commerce, Science and Transportation Committee, and the House Merchant Marine and Fisheries Committee for review.
- B. Either Committee may conduct hearings on the proposed sanctuary and issue a report, which must be considered by NOAA before designation. NOAA must also conduct a public hearing near the proposed sanctuary site. After 45 legislative days for Congressional review, NOAA may issue (1) the final environmental impact statement (FEIS); (2) the final management plan; and (3) the final regulations. At that time NOAA would also publish a notice that the

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sanctuary designation will become effective in 90 days.

- C. During this 90-day period, Congress may pass a joint resolution disapproving the sanctuary designation, or if the sanctuary is in State waters, the Governor of the affected State may object to the designation or any of the designation terms. Barring this action, at the end of the 90-day period, the Secretary of Commerce will issue a formal designation.

REAUTHORIZATION AND ISSUES

On March 21, 1988, H.R. 4208 was introduced to reauthorize the National Marine Sanctuary Program for fiscal years 1989 through 1992 at levels of \$3.2 million, \$3.5 million, \$4.0 million, and \$4.5 million, respectively. H.R. 4208 is likely to be the vehicle for markup which is scheduled before the Subcommittees on May 19, 1988. While H.R. 4208 contains no substantive changes to Title III, the following is a list of some of the issues which are likely to be raised for your consideration at the April 19th hearing.

I. ASSESSMENT AND RECOVERY OF DAMAGES TO SANCTUARY RESOURCES

Section 307(b) of Title III of the MPRSA gives the Secretary specific authority to assess civil penalties for violations of sanctuary regulations. Civil penalties are used to deter violators of sanctuary regulations. The amounts recovered are deposited into the General Treasury. But, the Secretary lacks explicit authority to assess and recover monetary damages for injury to or destruction of Sanctuary resources. The lack of this authority has created problems for NOAA's protection of Sanctuary resources in recent years.

Two recent accidents have caused significant damages to natural resources protected by marine sanctuary designations. The first event was the grounding on August 4, 1984, of the Cypriot vessel, M/V WELLWOOD, on Molasses Reef, within the boundaries of the Key Largo National Marine Sanctuary. The second event was the sinking in November, 1984, of the stern of the M/V PUERTO RICAN, a vessel of U.S. registry, within the boundaries of the Gulf of the Farallones National Marine Sanctuary. The WELLWOOD grounding caused the destruction of 5,805 square meters of coral reef in the Sanctuary. In the case of the PUERTO RICAN, some 1,400,000 gallons of oil spilled into the Sanctuary causing the piling or death of at least 1,400 seabirds, and the destruction of Dungeness crab larvae and zooplankton.

In both incidents, NOAA sued the owners and operators of the vessels for recovery of damages to protected resources and eventually settled both claims. In the case of the WELLWOOD, the Federal Government recovered from the vessel owners and operators a total of \$6.3 million as compensation for its response costs, resource damages and civil penalties. The settlement entails 15 annual payments to the government. Because NOAA lacks the

authority to retain funds recovered for damages, the amounts recovered as compensation for its resource damages will be paid into the U.S. Treasury and will not be available for restoration of the reef. The same is true for the PUERTO RICAN case. The government settled the resource damage claim for some \$600,000, but all of the monies recovered were deposited in the Treasury.

Two bills have been introduced in this Congress to address the damages issue -- H.R. 3640, introduced by Mr. Studds, and H.R. 3772, introduced by Mr. Lagomarsino. (H.R. 3772 primarily addresses measures for the protection of the Santa Barbara Channel.) The bills are similar in that they both provide NOAA with explicit authority to assess damages to sanctuary resources and to use the sums recovered for the restoration or replacement of these resources. The bills also make persons who destroy or injure a sanctuary resource and any vessel used in the destruction of or injury to any sanctuary resource liable to the Federal Government for damages. If one of these measures is enacted this year, it could enable NOAA to use some of the future payments in the WELLWOOD settlement on restoration of Molasses Reef.

II. THE AUTHORITY FOR CONCESSION AGREEMENTS WITHIN MARINE SANCTUARIES

Since 1975, when the first two National Marine Sanctuaries were established offshore North Carolina (U.S.S. Monitor) and Florida (Key Largo), the primary objective of the National Marine Sanctuary Program has been to provide protection for nationally significant resources within specific areas of the marine environment. Simultaneously, NOAA has implemented a policy of promoting multiple uses of designated areas whenever compatible with resource protection.

These general concepts were reaffirmed and sharpened in 1984 when the statute was substantially restructured. Nonetheless, questions of when, to what extent, and under what conditions, commercial uses of sanctuary resources are appropriate have presented a continually difficult issue for sanctuary managers.

The Congress has granted the Secretary of Commerce, in section 304(a)(1) of the 1984 amendments, broad authority to regulate all uses of sanctuary resources. Section 301(b)(5) of the 1984 amendments also establishes an marine sanctuary policy --

to facilitate, to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities.

Clearly, pursuant to sections 301 and 304 (and subject to certain restrictions contained in section 304(c) concerning rights existing before a designation), the Secretary may prohibit, authorize, and regulate any public or private use of sanctuary resources. Unfortunately, NOAA has not yet issued final regulations

implementing the 1984 amendments and existing regulations authorize permits only for research, education, and salvage activities.

Rapid growth of commercial activity in several sanctuaries has further complicated this already difficult management issue. Moreover, program managers recently received a proposal for a concession-type arrangement within the Key Largo National Marine Sanctuary which included an "undersea lodge".

In 1984, the Key Largo sanctuary manager began an effort to solicit private funds for the renovation of the Carysfort Reef Lighthouse. The Carysfort Lighthouse is owned and operated by the U.S. Coast Guard and is within the sanctuary boundaries. It is on the National Register of Historic Places. The sanctuary manager sought nonprofit support for the renovation in order to improve the lighthouse, making it suitable for use in promoting public education and handicapped access to the sanctuary.

In May, 1986, NOAA received a proposal from Carysfort Restoration Incorporated (CRI) to renovate the Carysfort Lighthouse in conjunction with a seven-room undersea lodge; the lighthouse would be available for public use and interpretation and provide support for the lodge. The argument was made by CRI that it would not be economically feasible to renovate and maintain the lighthouse for public use without the operation of the undersea lodge to provide stable financial support. Also, the proponents argued that the combination of the lighthouse interpretive center and the undersea lodge would enhance public education about the purposes of the sanctuary.

In November, 1987, NOAA declined to authorize the proposal, citing limited educational benefits, potential damage to sanctuary resources and insufficient statutory authority to enter into concession-type arrangements with commercial enterprises.

An effort was made to provide authorization for concession activities in the context of the fiscal year 1988 continuing resolution. This effort was forestalled, in favor of considering the question more completely during reauthorization of the statute.

Key Largo is by no means the only example. In other instances, a number of concession-oriented activities have developed around sanctuary resources, including recreational diving, whale watching, boat tours, and in the future, possible submarine tours. In certain of these instances, more stringent oversight and management may be appropriate in order to protect sensitive or threatened resources or to more effectively promote public access and understanding. This could be fostered by more explicit statutory authority governing concession agreements for marine sanctuaries.

The National Park Service has extensive experience in regulating commercial use of national parks under the National Concessions Policy Act of 1968 (Public Law 89-249). This statute has been suggested as a model for the National Marine Sanctuary Program.

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In parks, concessions are granted to provide a variety of visitor services and facilities. The facilities are intended to promote use and public education about the resources being protected while at the same time providing a balance between use and protection to ensure the basic purposes for which the park was created are being protected. Environmental interests maintain that the balance has generally been skewed in favor of use and development under Public Law 89-249.

Several questions of policy should be addressed in considering this matter. Does NOAA currently have adequate authority to permit and regulate commercial uses within sanctuaries, and should the authority be explicitly granted for NOAA to enter into concession-type arrangements similar to the authority conferred to the NPS? Under what circumstances should commercial uses be regulated? What standard should NOAA apply in reviewing commercial use proposals -- compatibility? What standard or policy should govern the decision to place commercial facilities within sanctuary boundaries? Should commercial uses be subject to a user fee, and if so, what should be done with the revenues generated? Should nonprofit organizations be subject to regulation similar to commercial enterprises?

OTHER ISSUES

Other issues which are likely to come up include (1) the pace and the administration of the designation process; and (2) several areas proposed for legislative or some type of accelerated designation.

These two issues are somewhat related. For example, the Flower Garden Banks Sanctuary has been under consideration for over 10 years and has not yet been designated. Many other sites which were included in the original SEL have not been further considered for designation even though there is considerable support for some of the designations.

Some areas which are likely to be proposed for Committee consideration include (1) Monterey Bay; (2) San Juan Islands; (3) Outer Washington; and (4) Stellwagen Bank, and Nantucket Sound and Shoals.

OCEANUS PUBLICATION

A recent issue of Oceanus which was dedicated expressly to the National Marine Sanctuary Program is included for your information.

Attachments

federal register

Thursday
August 4, 1983

Part III

**Department of
Commerce**

**National Oceanic and Atmospheric
Administration**

**Announcement of National Marine
Sanctuary Program Final Site Evaluation
List**

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Announcement of National Marine Sanctuary Program Final Site Evaluation List

AGENCY: National Ocean Service, NOS, National Oceanic and Atmospheric Administration (NOAA), Commerce

ACTION: Notice.

SUMMARY: NOAA is publishing a final list of marine sites (Site Evaluation List) that will provide the pool of areas from which NOAA will select sites to evaluate as candidates for potential national marine sanctuaries.

FOR FURTHER INFORMATION CONTACT: Dr. Nancy Foster, Chief, Sanctuary Programs Division, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, NW, Washington, D.C. 20235, (202) 634-4236.

SUPPLEMENTARY INFORMATION:

I. Authority

Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, 16 U.S.C. 1431 (the Act) authorizes the Secretary of Commerce, with Presidential approval, to designate ocean waters as far seaward as the outer edge of the continental shelf as marine sanctuaries to preserve or restore their distinctive conservation, recreational, ecological, or esthetic values. That authority is administered by the National Oceanic and Atmospheric Administration (NOAA) through the Office of Ocean and Coastal Resource Management (OCRM), Sanctuary Programs Division (SPD).

In January 1982, NOAA published a Program Development Plan (PDP) for the Program. The PDP describes the Program's mission and goals; site identification and selection criteria; and establishes a sanctuary management and designation process. On September 1, 1982, NOAA published proposed regulations for the continuation of the Program (47 FR 39197). Pursuant to the PDP and the regulations, NOAA published a proposed Site Evaluation List (SEL) March 1, 1983 (48 FR 6827). The public comment period on the proposed SEL ended May 31, 1983. On May 31, 1983, NOAA published final regulations for designating marine sanctuaries and the continued operation of the Program (48 FR 24296). Pursuant to these final regulations, NOAA is publishing the final Site Evaluation List (SEL).

II. SEL Process

The purpose of the SEL is to establish a list comprising the most highly qualified marine sites identified and recommended by the regional resource evaluation teams. The teams made these recommendations in accordance with the Program's mission and goals set forth in the Program Development Plan, in § 922.1 of the final program regulations, and the site identification and selection criteria described in Appendix 1 of the regulations. NOAA emphasizes that these sites are included on the SEL because they are areas of high natural resource value, and may warrant further analysis to determine their feasibility as active candidates for consideration as national marine sanctuaries. Listing a site on the SEL does not mean that the site is a proposed sanctuary, or that it will necessarily be considered as an active candidate for sanctuary designation. However, with limited exceptions as described in § 922.22(c) of the final program regulations, NOAA will only consider those sites on the SEL for further review as active candidates for marine sanctuary designation. Thus, the SEL serves as the pool from which potential future marine sanctuaries will be drawn.

Placement of sites on the SEL or selection for further consideration as active candidates does not subject such sites to any regulatory controls under Federal law. Such regulations may only be established after designation, as provided under § 922.31 of the final program regulations.

III. Summary of Significant Comments on the Proposed Regulations and NOAA's Responses

NOAA received comments from approximately 400 sources. Commenters included Federal and State agencies, representatives of the oil and gas industry, environmental and public interest groups and private citizens. All comments received are on file at the Sanctuary Programs Division, Office of Ocean and Coastal Resource Management. The comments are available at that office for review upon request. The major issues raised by commenters have been summarized and NOAA's responses provided under the relevant subheadings in this section. Site descriptions follow the comments.

Generic Comments

1. **Size of Proposed Sites.** Several commenters objected to the size of proposed SEL sites including Nantucket Sound/Shoals/Oceanographer Canyon, (1805 sq mi), Green Bay (1300 sq mi) and

Virginia Assateague (1200 sq mi). These commenters believed the sites to be too large and suggested that the geographic expanse of these sites be reduced.

NOAA Response: NOAA agrees that few of the sites on the proposed SEL cover relatively large expanses of marine areas. The site boundaries provided in the SEL are general study area boundaries and will be refined and in most cases reduced. For a site's progress to active candidate status, although no maximum or minimum size limits are established, the final National Marine Sanctuary Program Regulations (48 FR 24296) provide that the Channel Islands and Point Reyes-Farallon Islands National Marine Sanctuaries, covering 1,252 and 948 square nautical miles respectively, are likely to represent the upper end of the sanctuary size spectrum and that future sanctuaries will be no larger. Size considerations are specifically addressed under the Mission and Goals (§ 922.1(d)) and the Active Candidate Criteria (§ 922.30(b)(4)) of the final program regulations.

2. **Showing of Necessity.** Several reviewers suggested that NOAA should demonstrate that SEL sites are unique and deserving of special attention and that other existing State or Federal authorities are inadequate to provide such protection.

NOAA Response: Title III (the Act) authorizes the Secretary to designate marine sanctuaries to preserve or restore their conservation, recreational, ecological, or esthetic values. The Act does not specify that marine sanctuaries must be "unique" marine areas; however, § 922.30(b)(1) of the final program regulations states that a primary reason for selecting a site as an Active Candidate is its "high national resource and human use values" (§ 922.30(b)(1)). Existing Federal and State regulations and authorities are considered in determining whether to designate sanctuaries and in developing site specific management frameworks. Section 922.30(b)(3) of the final program regulations states that one of the criteria for selecting Active Candidates is an assessment of the adequacy of existing management requirements for protecting resources.

3. **Development of Regulations.** Several reviewers expressed concern that possible regulations for individual SEL sites were not discussed and that in the future regulations could be imposed that would be unreasonable or developed without input from affected users.

NOAA Response: The purpose of the SEL is to indicate sites of high resource

value. The regulation of activities is considered as part of the development of a draft management plan and draft environmental impact statement (DEIS), once a site is selected as an Active Candidate. The management plan and any necessary regulations are drafted in consultation with concerned Federal, State, local agencies, Regional Fishery Management Councils and other interested persons and groups. This dialog begins early in the development of the DEIS and includes public meetings and review of significant issues (§ 922.31(a)(c)). The DEIS is subject to public review, and a public hearing on the proposal in the area or areas most affected, by the sanctuary designation is required (section 302(e) of the Act).

As part of the designation process NOAA develops a designation document which specifies, among other things, the types of activities subject to regulation. Only activities included in the terms of the designation may be regulated and the designation document may be modified only by same process by which the original designation was made, including holding public hearings and obtaining Presidential approval.

Moreover, existing Federal and State regulations are considered in determining whether to designate marine sanctuaries and in developing the management framework for such sanctuaries. NOAA will rely upon existing Federal and State regulations to preserve or restore a sanctuary's natural resource and human use values when such regulations are adequate to meet the purposes for which the sanctuary was designated.

Site Specific Comments: North Atlantic Region

Mid Coast Maine

(1) Several reviewers supported the Mid Coast Maine site. No reviewers specifically opposed placement on the SEL.

NOAA Response—No response necessary.

Stellwagen Bank

(1) Over eighty reviewers supported Stellwagen Bank for placement on the SEL, citing the significance of the whale communities or the importance of the fishery habitat. These commenters included the State of Massachusetts Executive Office of Environmental Affairs.

NOAA Response—No response necessary.

(2) One reviewer supported the site but was concerned that there might be prohibitions on submarine electric

cables. One reviewer opposed any eventual marine sanctuary at Stellwagen, because of the fear that sanctuary designation will eventually lead to regulation of commercial fishing.

NOAA Response—Marine Sanctuary designation does not automatically restrict or prohibit any particular activity. For a discussion of when and how decisions on regulating activities are made, please see Generic Response #1.

Nantuxet Sound, Shoals Oceanographer Canyon

(1) Several reviewers support the placement of this site on the SEL, including the Massachusetts Executive Office of Environmental Affairs.

NOAA Response—No response necessary.

(2) One reviewer supported the site but was concerned that there might be a prohibition on submarine electric cables. Another commenter indicated that part of the site has been or is currently being studied for potential oil/gas leasing and that portions of Oceanographer Canyon possess high resource potential. Several gas and oil industry reviewers opposed inclusion of the site on the SEL. Several commenters believe the site to be too large and/or not "unique". Several believe that future pipeline corridors might be affected.

NOAA Response—Designation of a marine sanctuary does not necessarily restrict or prohibit any particular activity. For a discussion of when and how regulating activities are made, please see Generic Response #3. Reviewers concerned about the question of size are referred to Generic Response #1. For a discussion as to whether or not sites must be "unique" as a prerequisite for inclusion on the SEL, commenters are referred to Generic Response #2.

Assateague/Virginia Barrier Islands

Approximately 16 comments were received regarding the Virginia Assateague Barrier Islands area. Six were in favor; ten comments opposed inclusion on the SEL.

(1) The Maryland State Department of Natural Resources requested that the Maryland portion of the site remain on the SEL and expressed the belief that the local opposition was based on misinformation. The Commonwealth of Virginia Council on the Environment did not object to inclusion on the SEL and further evaluation, but expressed doubts about the benefits of marine sanctuary status. Another reviewer supported the site but was concerned that the area may be too large to manage. Several

other reviewers supported inclusion on the SEL.

NOAA Response—SEL designation is a preliminary action. NOAA evaluates the area in terms of its own factors as well as benefits derived from sanctuary designation and adequacy of existing management regimes (§ 922.30). For a discussion regarding the size of SEL sites please see Generic Response #2.

(2) Many Maryland and Virginia local or county governments are opposed to including this site on the SEL. These reviewers expressed concern that possible sanctuary designation would result in adverse economic impacts to the fishing industry and prevent possible offshore gas and oil development.

A public meeting to receive comments on listing this site on the SEL was held on March 2, 1983, at Berlin, Maryland, where many individuals expressed opposition to the proposed listing. Generally, the commenters believe that sanctuary designation will automatically preclude recreational and commercial fishing activities. Two commenters opposed the site because they did not know what the eventual restrictions would be.

NOAA Response—NOAA reiterates that the purpose of the SEL is to identify a pool of sites with high natural resource values from which a particular site may be selected for future analysis to determine whether the feasibility of its further consideration for designation as marine sanctuary. None of these reviewers took the position that the site was not highly significant or that the area did not meet criteria for inclusion on the SEL. The issues of regulation and prohibition of activities are worked out during the development of a management plan. No activities are automatically restricted or prohibited in a marine sanctuary. In fact, § 922.1 (b)(4) of the final program regulations specifically provides for compatible multiple use of national marine sanctuaries. For a more detailed discussion of how regulations are developed for a proposed sanctuary, please see Generic Response No. 3.

(3) Several gas and oil industry reviewers opposed the site because in their view it is too large and/or not "unique."

NOAA Response—For a discussion regarding the size of SEL sites please see Generic Response No. 1. Comment and for discussion as to whether a site must be "unique", please see Generic Response No. 2.

South Atlantic

Port Royal Sound

(1) Twenty-two (22) comments supported Port Royal Sound, including the Governor of South Carolina. These reviewers believe that the significance of the resources of the area warrant inclusion on the SEL.

NOAA Response—No response necessary.

(2) One reviewer opposed the site expressing concern that an estuarine system located completely within State waters is inappropriate for consideration as a marine sanctuary.

NOAA Response—The Act authorizes designating/establishing marine sanctuaries in waters where the tide ebbs and flows, or in the great lakes and their connecting waters. Such areas include State waters—usually an area within three miles.

(3) Another reviewer objected to the site because NOAA did not indicate what type of restrictions might be placed on fishing.

NOAA Response—Please see Generic Response No. 3 for a discussion on the process for developing regulations for proposed marine sanctuaries.

(4) One reviewer believes that the Port Royal Sound was rejected by the regional scientific team in July of 1982 and questions why it appears as a site possibility in October 1982.

NOAA Response—Although the regional team did not include the site in the July list for public review, a public nomination was submitted in response to the July mailing. The nomination detailed the significance of the resources and enjoyed substantial public support. Consequently, the team reassessed the area and subsequently placed it on the October list of possible sites presented for public review.

Florida Coral Grounds

(1) Six (6) comments were received on the Florida Coral Grounds. Five reviewers, including the Governor of Florida, supported inclusion of the area on the SEL. One reviewer commented on the portion of the area that was studied for potential development.

NOAA Response—No response necessary.

(2) Another reviewer indicated that the Oculina Reefs were an important fishing area and believes that the views of the Fishery Management Council should determine the nature of any regulation on fishing activities.

NOAA Response—NOAA consults with the appropriate Fishery Management Council before selecting a

site as an Active Candidate (§ 922.30(b) of the final program regulations) and as part of the development of a final management plan (§ 922.31(a)). In addition, NOAA may and, in certain cases has, left regulation of fishing to the appropriate Fishery Management Council. For a further discussion on development of regulations, please see Generic Response No. 3.

(3) Another reviewer suggested several corrections to make the site description more accurate.

NOAA Response—NOAA has incorporated these changes.

Ten Fathom Ledge—Big Rock

(1) One reviewer supported inclusion of the site on the SEL.

NOAA Response—No response necessary.

(2) Another indicated that the area was being studied for potential oil and gas leasing, and a third believes the area should not be listed until the exploratory drilling determines the hydrocarbon potential of the area.

NOAA Response—Because the only purpose of establishing the SEL is to identify areas with high natural resource and human use value, NOAA will consider existing or potential users of the site when it determines whether to select it as an Active Candidate.

Gulf of Mexico Region

Flower Garden Banks

(1) Twenty-seven (27) comments were received on Flower Garden Banks. Twenty-five (25) reviewers supported its listing on the SEL. These reviewers believe that the biological significance of the banks warrant further consideration. One of the commenters added that sanctuary designation may be the only way to protect the reefs from certain damage caused by activities other federal programs are unable to regulate.

NOAA Response—No response necessary.

(2) Two reviewers opposed placement on the final SEL. These commenters believe that existing federal regulatory programs are adequate to protect the Banks.

NOAA Response—Detailed analysis of the adequacy of existing regulatory schemes will be undertaken should the site be considered for Active Candidacy. For more discussion on the process NOAA uses to develop regulations for proposed sanctuaries, please see Generic Response #3.

Big Bend Grassbeds

(1) Ten (10) comments were received in support of the Big Bend Grassbeds.

The Governor of Florida and other reviewers believe the area warrants further consideration and support for placement on the SEL.

NOAA Response—No response necessary.

(2) One of these reviewers recommended that the site boundaries be drawn to include Crystal River and Bay.

NOAA Response—The boundaries presented in the SEL are study area boundaries and in many cases will be modified when a management plan and environmental impact statement are developed. One of the stated reasons for considering the Big Bend Grassbeds as a potential sanctuary is the importance of the area as habitat for the endangered manatee. Accordingly, emphasis will be placed on drawing the boundaries to include important habitat areas.

(3) One reviewer opposed inclusion of the site on the grounds that it is not unique. Another reviewer stated there were no threats and that existing laws and regulations provide adequate protection for the resources of the area.

NOAA Response—The SEL identifies areas of high resource and human use values. The final program regulations provide for a consideration of threats and adequacy of existing management or regulatory schemes (§ 922.30(b)(2)(3)) before selection as an active candidate. Please see Generic Response #2 for further discussion.

(4) One commenter indicated that current fishing regulation is extensive and suggested that NOAA should rely on the Regional Fishery Management Council to determine any fishing regulations.

NOAA Response—The final program regulations require consultation with the appropriate Fishery Management Council before selecting a site as an Active Candidate (§ 922.31(a)). In addition, NOAA may and, in certain cases, has left regulation of fisheries to the FMC. For further discussion of development of regulations, please see Generic Response #3.

Shoalwater Bay—Chandeleur Sound, Louisiana

(1) One reviewer supported inclusion on the list citing the natural significance of the resources.

NOAA Response—No response necessary.

(2) Two reviewers expressed the belief that the area was not threatened and indicated that the area was already adequately managed for fish and wildlife purposes by the State of Louisiana. Two other commenters concurred expressing the belief that

added federal control in state waters was not justified. The Governor of Mississippi withdrew a previous endorsement of the draft, indicating that sufficient management regimes exist to protect the area.

NOAA Response—Placement on the SEL only indicates high resource and human use values. Other considerations such as the adequacy of existing management/protective regimes are addressed when and if the site is considered for Active Candidate status. For further discussion of these issues please see Generic Response #2.

Baffin Bay

(1) Five individuals supported the inclusion of Baffin Bay on the SEL.

NOAA Response—No response necessary.

(2) One reviewer expressed reservations about the "national interest" in the resources of the site, and another suggested that the site was better suited for an estuarine sanctuary.

NOAA Response—Before selecting a site as an Active Candidate, NOAA will consider the site's relative contribution to the Program's mission and goals and further evaluate the natural resource values of the area as provided for by §922.30(b)(1).

(3) Two reviewers believe that the area is not threatened and that existing laws and regulations are adequate to protect the resources.

NOAA Response—Before selecting a site as an Active Candidate, NOAA considers such factors as the existing management/regulatory schemes. Please see Generic Response #2 for further discussion.

(4) Two other reviewers indicated that the area has ongoing gas and oil activities and believe that the area is of limited ecological value and not appropriate for eventual consideration as a marine sanctuary.

NOAA Response—The mission and goals of the National Marine Sanctuary Program provide for the use of marine sanctuaries. NOAA will consider the proposed uses before selecting a site as an Active Candidate.

Eastern Pacific Marine

Washington Mountains

(1) Over forty-five (45) reviewers supported inclusion of the site on the SEL.

NOAA Response—No response necessary.

(2) One commenter did not express a formal position but recognized the importance of the area and expressed a

desire to be involved in any further actions.

NOAA Response—The process for designating a national marine sanctuary provides a number of opportunities for public involvement. The procedures for public involvement in the designation process include: preliminary public consultation prior to selection of an Active Candidate (§ 922.30(c)); local public meetings after Active Candidate selection and while preparing the draft management plan and environmental impact statement (§ 922.31(a) and (c)); and during the public comment period and public hearing after publication of the draft management plan and draft environmental impact statement.

(3) One reviewer expressed the concern that management of a sanctuary should not restrict recreational use. Other commenters indicated that fishing in the area is an important and traditional use that should be allowed to continue.

NOAA Response—Designation of a national marine sanctuary does not automatically restrict or prohibit any particular activity. Decisions of this nature are made during the development of the management plan after selection as an Active Candidate. For further discussion on the development of regulations, please see Generic Response #3.

(3) Two other commenters opposed placement of the site on the SEL. These reviewers do not believe that inland waters are appropriate for consideration as marine sanctuaries.

NOAA Response—The Act authorizes designating/establishing marine sanctuaries in areas where the tide ebbs and flows, or in the Great Lakes and their connecting waters. Such areas can include State waters.

(4) Two other reviewers believe that the site is too large to be classified as "unique".

NOAA Response—For a discussion on the size of the SEL sites, please see Generic Response #1. For a discussion on whether an area must be "unique" to qualify for the SEL, please see Generic Response #2.

(5) Several commenters believe that the Skagit Bay, Dungeness Bay, and the waters around McNeil and Gertrude Islands should be included in the site for SEL purposes.

NOAA Response—The Eastern Pacific Regional Team recommended Skagit Bay. NOAA considered the site but did not place it on the list for two reasons:

(1) There was an absence of local and State support. During the preliminary stages of formulating the SEL, there was significant local opposition to placement of any area in Puget Sound placed on

the SEL. While the State of Washington Department of Ecology did not specifically object to Skagit Bay, it did not offer support.

(2) There was the issue of relative ecological significance. While Skagit Bay is an area of ecological importance, NOAA believes that in light of the lack of strong support the most reasonable approach is to list the regional area of greatest natural resource value. We believe that area is the waters around the San Juan Islands.

Washington Outercoast

(1) Several reviewers supported inclusion of the site on the SEL.

NOAA Response—No response necessary.

(2) One commenter believes that any sanctuary proposal should allow for recreational use. Two others indicate that fishing is an important traditional use that should be allowed to continue.

NOAA Response—For further discussion of the development of regulations please see Generic Response #3.

(3) The Makah Tribal Council indicated that it would like to support the site but was concerned over issues such as treaty rights, extent of regulation and the role the Tribe would play in the management planning process.

NOAA Response—For a discussion of the development of regulations if a national marine sanctuary is designated please see the response (2) above and Generic Response #3. The relation of treaty rights to sanctuary designation would be addressed if the site is selected as an Active Candidate.

The process for designating a national marine sanctuary provides a number of opportunities for public involvement: before selecting a site as an Active Candidate NOAA requests comments from the Public (§ 922.30(c)); after selecting the site as an Active Candidate and while preparing the draft management plan and environmental impact statement (§ 922.31(a) and (c)) and after publication of the draft management plan and draft environmental impact statement.

Heceta Seamount Banks

(1) Two commenters supported inclusion of this site on the SEL.

NOAA Response—No response necessary.

(2) One reviewer notes that exploratory hydrocarbon activities have taken place in the area and believes that NOAA should provide assurances that sanctuary designation would not prohibit oil and gas activities.

NOAA Response—The purpose of the SEL is to identify sites with high natural resource and human use values. The decisions on which activities are restricted or prohibited are made by a site is selected as an active candidate. For further discussion on how and under what circumstances regulations are developed, please see Generic Response #3.

Morro Bay

(1) Several reviewers and a petition with over 80 signatures supported inclusion of Morro Bay on the SEL. These reviewers emphasized the crucial role the Bay plays as a vital stopover for migratory birds along with Pacific Flyway.

NOAA Response—No response necessary.

(2) Two reviewers opposed placement on the SEL, indicating that the State has taken steps to protect the Bay.

NOAA Response—An analysis of existing regulatory/management schemes and their adequacy is undertaken when a site is selected as an active candidate. For further discussion please see *Catalina Response* #2.

Tanner-Cortez Banks

(1) Two reviewers supported inclusion on the SEL, indicating that the area was a reasonable size and contained unique resources.

NOAA Response—No response necessary.

(2) One reviewer opposed placement on the SEL, expressing the belief that the quality of the resources did not justify the expense of a marine sanctuary.

NOAA Response—Section 922.30(b)(5) of the final program regulations directs NOAA at the time of evaluation for Active Candidate Status to consider the economic impacts and benefits of sanctuary designation.

Western Lake Erie

(1) Two of the Western Lake Erie reviewers stated that the area may be suitable for a marine sanctuary. NOAA is currently developing a plan to designate the area as a National Marine Sanctuary. NOAA is currently conducting a study of the area to determine if it is suitable for a marine sanctuary. NOAA is currently conducting a study of the area to determine if it is suitable for a marine sanctuary.

NOAA Response—The selection and goals of the National Marine Sanctuary Program provide for a wide range of uses. NOAA is currently conducting a study of the area to determine if it is suitable for a marine sanctuary. NOAA is currently conducting a study of the area to determine if it is suitable for a marine sanctuary.

(2) One reviewer provided unqualified support for Cocos Lagoon and Papaloona Point but questioned the large size of the Southern Mariana Islands site and the need for sanctuary status of the Farpoint to Santo Angel site.

NOAA Response—For a discussion on the size of SEL sites, please see Generic Response #1. With respect to the need for sanctuary status, NOAA will consider existing management regulatory regimes before selecting a site as an active candidate (§ 922.30(b)(4)). For further discussion on this point, please see Generic Response #2.

Caribbean

Only two comment letters were received on these proposed Caribbean sites. One reviewer supported all three sites. The other reviewer supported the East End St. Croix site and indicated that the waters have been utilized by commercial interests and recreational divers.

NOAA Response—NOAA appreciates this information regarding uses of the resources and will take such activities into consideration if the site is evaluated for selection as an Active Candidate.

Great Lakes

(1) One reviewer expressed concern over any designation of marine sanctuaries in the Great Lakes. This commenter believes the areas on the proposed SEL are too large; that existing state regulations are adequate to protect the resources; and that the sites include incompatible areas such as dredged shipping channels.

NOAA Response—For a discussion of boundaries of the SEL sites please see Generic Response #1 and for a discussion of the adequacy of existing State legislation please see General Response #2. Before selecting a site as an Active Candidate, NOAA will consider existing uses of an area such as dredged shipping channels and determine whether those uses are compatible with the purposes for which the site is being considered for designation.

Green Bay

(1) One reviewer supported the site believing that the proposal is consistent with the "Future of the Bay Program."

NOAA Response—No response necessary. (2) Several reviewers opposed placement of the Green Bay site on the SEL. One commenter believes that industries relying on water transportation would be put out of business if a marine sanctuary were established.

NOAA Response—Designation of a marine sanctuary does not automatically restrict or prohibit any particular activity. Please see Generic Response No. 3 for a further discussion on how and when regulations are developed.

(3) Several reviewers believe that this site is not of comparable value to the other proposed SEL sites because it is warm water, estuarine and polluted. These reviewers also doubt that "restoration" is in order. One commenter indicated that the lower Bay is totally developed and additional plans for enlarging the harbor have been adopted. Another reviewer indicated that two harbors in lower Green Bay have substantial dredging needs. One reviewer also suggested that the lower Bay was unsuitable for a marine sanctuary and proposed limiting the area to the upper portion of the site.

NOAA Response—NOAA appreciates this information regarding (past) existing uses of the resources of the lower Green Bay site provided by these reviewers. The area was originally recommended and placed on the draft SEL because of the possibility of "restoring" the site as Section 302(a) of the Act permits designation of marine sanctuaries for "the purpose of preserving or restoring such areas . . .". Although NOAA will place this site on the SEL, if a preliminary decision is made to pursue this site NOAA will evaluate carefully the feasibility of including the lower Bay in the Active Candidate determination in light of the information and concerns provided by these reviews. In addition, at that same time NOAA will contact these reviewers and request additional information.

Western Lake Erie Island Including Sandusky Bay

(1) Several reviewers, including the Ohio Department of Natural Resources, believe that the quality and diversity of the resources of the site warrant further consideration and possible sanctuary status.

NOAA Response—No response necessary.

(2) One reviewer expressed concern that a marine sanctuary might result in additional regulation of the nuclear power plant located in the area. Another was concerned that the sanctuary designation may be in conflict with maintenance dredging and spoil disposal that presently occur within the site.

NOAA Response—Before NOAA selects sites as active candidates, the area is further assessed in light of national resource and human use values.

and the adequacy of existing protection regulatory schemes (§ 922.30(b)(3)). For further discussion please see Generic Response No. 2.

Cape Vincent

(1) One reviewer supported inclusion on the SEL noting that the area contains high recreational values.

NOAA Response—No response necessary.

(2) Two reviewers opposed placing the site on the SEL. These reviewers believe that existing New York State regulations offer adequate protection.

NOAA Response—Before selecting a site as an Active Candidate, NOAA considers such factors as the existing management/regulatory framework. For further discussion please see Generic Response No. 2.

Thunder Bay

(1) Two reviewers support inclusion of the site on the SEL.

NOAA Response—No response necessary.

(2) One commenter believes that the site has potential for sanctuary designation but is concerned that much of the area may be inaccessible.

NOAA Response—The purpose of the SEL is to identify areas of high resource value. Before selecting an area as an Active Candidate, NOAA evaluated the site in terms of the human values and benefits to be derived from sanctuary designation (§ 922.30(b)(1)(3)). Accessibility for the public is one factor in this evaluation.

Lake Superior

(1) Two reviewers support inclusion of the site on the SEL noting the significance of the resources.

NOAA Response—No response necessary.

(2) The State of Michigan Department of Natural Resources opposed placement of the Isle Royale portion on the SEL because the U.S. National Park Service already had jurisdiction over the area and additional protection and management is provided.

NOAA Response—NOAA decides to proceed with the site contact and coordination with the Department of the Interior's Department of the Interior to determine whether or not there are significant benefits from including Isle Royale as a proposed sanctuary.

Site Evaluation List: North Atlantic

Mid-Coastal Maine, Maine

This site covers an area of 430 mi² of coastal waters including both State and Federal waters. The site encompasses the mouths of three major estuaries and two bays. It contains intertidal shallow

and deep water zones which vary greatly in bottom type, wave exposure and biological components. The three rivers are the Kennebec, Sheepscot, and the Damascene. The site includes the waters of Johns and Muscongus Bays and Southport, Sequon, Damascene, Fishermen's Inner Harbor, Outer Harbor, White, Squirrel, Georges, and Minnetonka Islands. Three marine research and educational facilities are situated on land adjacent to the site: the Maine Department of Marine Resources Laboratory, the Bigelow Laboratory for Ocean Sciences (both in Boothbay Harbor), and the University of Maine Darling Center in Walpole, ME.

Stellwagen Bank

This site is approximately 31.7 miles (50 km) by 19.1 miles (30.6 km) covering approximately 605 mi² (1,567 km²). The site is entirely within Federal waters situated on submerged Stellwagen Bank which is 6.3 miles (10.2 km) north of Cape Cod, Massachusetts.

Scientific and educational interest has been drawn to Stellwagen Bank due to the recurring seasonal abundance of several cetaceans, species, including the largest high-latitude population of humpback whales in the contiguous United States. The biologically-productive waters of the Bank provide important feeding and nursery grounds for this and other cetaceans, including fin, minke, and northern white whales. There are at least seven cetacean species occurring at Stellwagen Bank.

Commercially valuable fishery resources are also found in the area, including mackerel, bluefin tuna, and blue fish. The Bank is extensively used by commercial and recreational fishermen, whalewatchers, and cargo vessels.

Smaller cetacean species include the Atlantic white-sided dolphin, the white-beaked dolphin, and the harbor porpoise. In addition to these frequently observed cetacean species, killer whales and pilot whales have also been spotted.

Nantucket Sound/Shoals and Oceanographer Canyon

The proposed Nantucket Shelf site encompasses approximately 1,805 mi² (4,650 km²) and represents a variety of habitats within the biogeographic transition zone between the northern Acadian and southern Virginian regions. Habitats included are open bay (Nantucket Sound), nearshore open ocean and shoals (Nantucket Shoals), and a shelf-edge submarine canyon (Oceanographer Canyon). The Nantucket Sound site is in Federal waters between Nantucket Island and Cape Cod, Massachusetts, and its

outer limits are about 20 miles from the Massachusetts Ocean Shelf. The Nantucket Shoals and Oceanographer Canyon sites lie within Federal waters of the United States.

The Nantucket Sound site is south of Cape Cod, the Sound is affected by the convergence of two major ocean currents, the Labrador Current and the Gulf Stream. The mixture of these systems contributes to the large diversity of species found here. The richness of this transition zone ecology enhances the stability of plant life and the productivity of the estuaries in bordering coastal lands that provide habitats for the many species that use the proposed marine sanctuary areas as nursery and feeding grounds. More than 16 species of fish and shellfish are commercially harvested in the area. The most common species found are alewife, bluefish, cod, flounder, clams, whelks, scallops, and squid.

b. *Nantucket Shoals*: Nantucket Shoals are a series of shifting sand shoals, derived from glacially deposited sediments that have been winnowed by marine processes. Most of the shoals are found under water depths of only 25 feet (8 m). Between many of the shallow areas are channels extending 60-120 feet (18-36 m) deep. The site includes Great South Channel.

Fishes common to this area include bluefish, striped bass, pollock, little tuna, Atlantic cod, and mackerel. Clams, scallops, and quahogs are found in some of the shoal's areas. Sea ducks overwinter in this area, and humpback whales occasionally feed within the proposed site.

c. *Oceanographer Canyon*: Submarine canyons, in general, provide a heterogeneous environment characterized by a variety of substrate types, and because they act as conduits for the transport of material from the shelf to the abyss, filter feeding organisms are more common there than on the shelf. Within Oceanographer Canyon, the concentrations of organisms per 100 m² shows peak values of 400-450 around depths of 1,300 feet (400 m) to 6,000 feet (1,800 m). Major faunal groups include corals (primarily alcyonarians), echinoderms, fish and crustaceans (particularly shrimp).

Virginia/Assateague Island

The candidate site would cover approximately 1,200 mi² (3,100 km²) and lies within both State (Virginia and Maryland) and Federal waters. The site would include the estuarine waters and wetlands adjacent to the barrier islands and mainland along the Atlantic coast of Virginia and Maryland from the north

end of Assateague Island southward to Fisherman's Island out to 10 miles (16 km) from shore.

Along the periphery of this area are extensive, immensely productive marshes dominated by *Spartina alterniflora*. Dozens of benthic species are found here including at least 18 species of decapod crustaceans. Crabs, oysters, and clams feed upon the vegetation and microorganisms within these waters. More than 96 species of fish inhabit or migrate through these waters. Seals and dolphins are occasionally reported in this area. The threatened Atlantic loggerhead and green turtles occur here. Tracts of widgeon and seagrass cover bay bottoms, and scallops inhabit beds of seagrass. A great diversity of waterfowl and shorebirds, including both migratory and resident species, is abundant. Active breeding colonies of birds exist on islands surrounded by these estuarine waters. Eagles, ospreys, brants, peregrine falcons, and the endangered brown pelican utilize the habitat of the area.

South Atlantic Region

Ten Fathom Ledge—Big Rock

This site consists of two areas. The inner shelf site (Ten Fathom Ledge) is a 135 mi² rectangle with its center located about 17 miles south of Cape Lookout, NC. The outer shelf site, "Big Rock" is located on the shelf break about 36 miles offshore, and is a 36 square mile area. These are both hard-bottom areas, with high productivity and assemblages of tropical marine organisms at the northern extreme of their range. The inner site includes four popular recreational diving spots; one of which includes a World War II German submarine.

Port Royal Sound, South Carolina

The site lies entirely within State waters covering an area of approximately 54.6 mi² (141 km²). Port Royal Sound is South Carolina's largest shallow-water sound and has a low salinity body of water. The influence is primarily from the Coosawatchie and Pocomoke Rivers. The site is bordered in part by tracts of highly productive marshlands which provide important nutrient input for the area's food web. Numerous shellfish including shrimp, oysters, crabs, and clams inhabit these waters. Many species, such as king and Spanish mackerel, found primarily in coastal ocean waters elsewhere, are common. The site is a habitat for the endangered bald eagle, brown pelican, and alligator. The threatened green turtle has been

reported in the area and the loggerhead turtle nests on beaches in the vicinity and endangered turtle species which are occasionally reported in the area include: Leatherback, hawksbill, and Kemp's Ridley. Bottle-nosed dolphins are also common.

Florida Coral Grounds, Florida

This site consists of two areas off the coast of Florida. These two areas are the 4.5 mi² "worm" or "bathtub" reef at St. Lucie, FL, and 92 mi² of the Oculina Reefs located 17 miles off the Florida coast in 70 to 100 m of water. The Oculina Reefs are unusual formations of ivory tree coral that forms delicately branched structures of moderate to high relief. *Oculina varicosus* provides a substrate and protection for a diversity of marine macroinvertebrates. The Oculina Reefs are also important breeding grounds for commercially valuable populations of gag and scamp grouper, nursery grounds for juvenile snowy grouper, and feeding grounds for these and other fish including black sea bass, red grouper, amberjack, and red snapper. The shelfedge system may form part of the migration pathway for king mackerel. Large populations of commercially important squid, *Illex oxygnus*, spawn on reefs and spiny tail stingray use the reef region for courtship and mating.

St. Lucie Nearshore Reefs are hard bottom nearshore reefs of moderate to high relief, 1–15 feet (0.3–4.6 m), situated at a depth of 5–27 feet (1.5–8 m) adjacent to St. Lucie Inlet, south of Ft. Pierce, Florida. Hard corals such as the ivory tree coral (*Oculina varicosus*), soft corals, and tube-forming sabellariid worms grow on limestone ledges, 15 feet (4.6 m) arches, and spur-and-groove buttresses. St. Lucie reef represents the northern limit for several species of hard corals (*Diploria clivosa*, *Oculina diffusa*) and soft corals.

Caribbean Region

Cordillera Reefs, Puerto Rico

This site includes approximately 62 mi² (160 km²) around the Cordillera Islands totally lying within the waters of the Commonwealth off the northeast coasts of Puerto Rico. The area contains extensive and well-developed coral formation and provides habitat for the endangered manatee (*Trichechus manatus*) and the hawksbill turtle (*Eretmochelys imbricata*).

Southeast St. Thomas, U.S. Virgin Islands

This site consists of 12.3 mi² (32 km²) of Virgin Islands' territorial waters immediately southeast of St. Thomas.

Jersey and Cowpet Bays, and the waters surrounding Great and Little St. James, Dog, Buck and Capeila Islands. The area encompasses diverse tropical marine ecosystems, important coral reefs, and transitional marine meadows of algae and turtle grass.

East End, St. Croix, U.S. Virgin Islands

The area of this site is approximately 40 mi² (102 km²). The site is within territorial waters and is adjacent to the east end of St. Croix, including the waters east of Buck Island and the area of Lang Bank out to a 60 foot depth to Great Pond Bay on the south coast. The site consists of a rich diversity of tropical species and marine habitats, including corals, manne meadows and fish.

Gulf of Mexico Region

Big Bend Seagrass Beds, Florida

This site is composed of 100 mi² of seagrass beds in the "big bend" region of Florida. These beds extend up to 22 miles (35 km) offshore and are a vastly productive habitat supporting a rich diversity of marine organisms including the endangered manatee. The seagrass community greatly increases the surface area available for plants and animals and provides a suitable substrate for many organisms that would not be able to colonize bare sand. In this way, the seagrass beds sustain the growth and proliferation of vast numbers of marine invertebrates and algae which interact in a delicately balanced food web that supports several commercially important species such as oysters, scallops, blue crab, stone crab, shrimp, red drum, spotted sea trout, and mullet.

In addition to supporting a rich diversity of food organisms for commercially important indigenous and migratory species of finfish, detrital material derived from the seagrass beds may also provide an important source of nutrition supporting the adjacent oyster reef communities.

Shoalwater Bay—Chandeleur Sound, Louisiana

This site includes approximately 80 mi² (207 km²) of State waters, pristine, shallow-water seagrass beds and algae located upon a subsiding remnant of abandoned Mississippi River delta. Adjacent to the east of this site is the Breton National Wildlife Refuge.

Dense stands of manatee grass (*Syringodium*), turtle grass (*Thalassia*), shoalgrass (*Halodule*), and widgeon grass (*Ruppia*) provide shallow-water habitat for numerous finfish and shellfish in the proposed sanctuary. All five species of marine turtles which

inhabit the Gulf of Mexico historically have been known to forage and nest in this area. These are the loggerhead turtle (*Caretta caretta*) and the threatened green turtle (*Chelonia mydas*), as well as three endangered turtles: hawksbill (*Eretmochelys imbricata*), Atlantic ridley (*Lepidochelys kempi*), and leatherback (*Dermochelys coriacea*).

The island shores adjoining the proposed site support black mangrove (*Avicennia germinans*) and intertidal marsh grass communities. Approximately 13,000 migratory waterfowl rely upon the shoals of this area for winter foraging.

Flower Garden Banks

This site is located 110 miles (160 km) offshore, consisting of east and west sections approximately 16 miles (25 km) apart and representing the northernmost coral reef community in the western Gulf of Mexico. The borders of any proposed sanctuary would conform to the Bureau of Land Management "no activity zone" and encompass a total of 44 mi² (114 km²). The area is a valuable representation of a tropical coral reef community dominated by hermatypic coral (*Montastra annularis*, *M. cavernosa*, *Porites astreoides*, and *Diploria strigosa*) and associated reef fishes and invertebrates.

Baffin Bay

At high tide, this site covers approximately 96 mi² (246 km²), entirely within Texas State waters, and includes Baffin Bay, Laguna Salada, Cayo del Grullo, and Alazan Bay. Approximately 25 percent of the Bay system is composed of intertidal salt flat communities. The waters of the Bay are confluent with the upper Laguna Madre; however, the waters of the Bay system remain notably hypersaline.

The Baffin Bay complex occupies a former river valley, drowned as the sea level rose after the last ice age, 5,000–10,000 years ago. Throughout this area are shallow, sand-covered flats less than 9 feet (3 m) deep. Extensive mudflats, black and gray mud, and sand cover the bottom. Reef rocks and rubble are scattered over the bottom, and are most notable across the mouths of Baffin Bay and Alazan Bay.

Eastern Pacific

Washington State Nearshore, Washington

This consists of waters around the San Juan Islands within Puget Sound. It

encompasses approximately 350–375 mi² and is representative of rocky-shore, deep-water, and shallow-embayment habitats. The area contains mud and sand flats, sheltered bays and marshes. Biotic zonation patterns typical of rocky shore habitats are clearly evident as the 12 foot (3.7 m) tidal range exposes a rich diversity of marine flora and fauna. Rockweed and a variety of smaller green, red, and brown microalgae form the basis of the nearshore food web, and support vast populations of isopods, amphipods, hermit crabs, shrimp, barnacles, and other marine organisms associated with rocky shore habitats. Subtidally, rockfish, lingcod, cabezone, sculpin, and salmon abound in large numbers. The deeper waters serve as an important habitat for minke, gray, killer, and pilot whales, harbor and dall porpoises, harbor seals, stellar sea lions, and elephant seals. Bird nesting and feeding sites are interspersed throughout the San Juan Island complex, which supports the highest known concentration of nesting oystercatchers in the United States. Bald eagles are common and depend upon the marine environment for much of their food.

Western Washington Outer Coast, Washington

This site extends from Duntz Rock (north of Tatoosh Island on the northwestern tip of Washington State), 90 miles (145 km) southward along the coast to Point Grenville. The area lies within Washington State's jurisdiction. The inshore boundary would extend to mean high water; the offshore boundary is contiguous with the boundary established for the Washington Islands National Wildlife Refuge, 2–3 miles (3.2–4.8 km) offshore and would encompass approximately 230 mi². The area is representative of high wave-energy, rocky shore ecosystems, but is unique as a breeding and feeding ground for migratory marine birds, mammals, and fish. The area includes offshore kelp beds, numerous pocket beaches of fine or coarse-grained sands, and richly productive estuarine systems.

Heceta-Stonewall Banks of Oregon

This site is a hard-bottom bank which has an area of approximately 400 square miles (1,000 km²) lying entirely within Federal waters. The outer boundary of the site lies along the 100-fathom depth contour. The surface waters of this area are highly productive, especially during the summer when northerly winds drive surface water offshore and nutrient-rich water upwells into the area. Bottom topography also causes turbulence bringing nutrient-rich waters to the surface. The Columbia River influences

the area during the summer, adding nutrients which contribute to the high productivity.

The highly productive waters of this site provide a large food supply for fish populations. Abundant zooplankton thrive upon the phytoplankton blooms and, in turn, are eaten by other marine animals. The commercially important rockfish feed upon the euphausiid shrimp, small fish, squid, and various zooplankton that inhabit this area. Fish caught in this area include various rockfish, hake, lingcod, ocean perch, flounder, sole, halibut, mackerel, salmon, sablefish, skate, sculpin, and ratfish.

Morro Bay, California

Situated south of the city of Morro Bay in San Luis Obispo County, this 2,000-acre embayment supports three habitats: coastal salt marsh, tidal mud flats, and deep-water channels. Morro Bay, within California State waters, is a heavily used fishing port and one of the largest bay wildlife habitats on California's coast. At low tide, 1,400 acres of mud flats are exposed, providing a vast feeding ground for over 250 species of birds and access to an extensive clam shellfishery resource. This is an important nesting area for egrete, herons, and the endangered American peregrine falcon. A portion of this site falls within a State Park.

Tanner-Cortes Banks off California

This site consists of two neighboring rocky-bottom sites some 112 miles (180 km) west of San Diego, California. The composite area of these two sites is approximately 10 mi² extending down to the 200 feet (60 m) depth contour. The location of the banks in relation to oceanic currents results in a combination of both nearshore and offshore organisms. The underwater visibility is normally in excess of 10 feet (20 m). This area contains accessible, rare, relict lifeforms and newly-discovered species which have been the subject of scientific investigations. This area is important for maintenance of those species.

Western Pacific Region

Northern Mariana Islands

This site includes the waters out to 12 miles (20 km) from Urcus, Maug, Asuncion, Pagan, Guguan, and Saipan islands; and encompasses approximately 700 mi². All of the islands are unpopulated and the area consists of a unique north-south orientation that presents a natural setting for biogeographical studies of marine organisms along a temperature gradient.

Southern Mariana Island

[illegible]

Papalola Point, Ofu Island, American Samoa

Great Lakes Region

Cape Vincent (Lake Ontario), New York

This site encompasses 450 mi² (1,165 km²) situated in the northeastern corner of Lake Ontario, and is the gateway to New York State's Thousand Islands resort area and the St. Lawrence Seaway. The Gape Vincent area includes some of the most biologically rich and diverse habitats within the Great Lakes region and represents an environment critical to the life histories of many commercially and recreationally important fisheries of the Great Lakes.

* The steelhead is the major fish spawning habitats for 27 species of finfish. Adirondack and rainbow smelt (important food fish for Lake Ontario's rapidly growing Pacific salmon fishery), as well as northern pike, bullhead, yellow perch, smallmouth bass, brown trout, and rainbow trout spawn in these bars.

Broader habitat. Little Galloo Island and Gull Island are important nesting, feeding, and resting habitats for more than 3,000 birds, representing 28 species of migrating and indigenous waterfowl. Loons, grebes, petrels, gulls, white pelicans, double-crested cormorants, great blue herons, great white egrets, black swans, geese, cormorants, wilsons, terns, sandpipers, as well as osprey.

Western Lake Erie Islands including Sandusky Bay, Ohio, Lake Erie

This site encompasses approximately 440 mi² (1,140 km²) of Sandusky Bay, open Lake Erie waters, lake and bay bed, and wetlands, all within Ohio State jurisdiction. The Muddy Creek Bay wetland on the western end of Sandusky Bay is the most extensive wetland in Ohio along the Lake Erie coast. The site is utilized as a migration area by waterfowl, shorebirds, and passerine (perching) birds. Mallards, black ducks, and blue-winged teals breed in the marsh areas. The endangered bald eagle has historically nested in this area. Dense concentrations of great blue herons, great egrets, and black-crowned night herons nest within the West Sister Island U.S. Game Refuge. Cormorants, gulls, and various waterfowl breed on other islands. The common egret, least bittern, hooded merganser, king rail, and common tern are also found within the proposed site.

Ninety-five species of fish have been reported from this area. The area's dominant fish species which breed within these waters are: walleye, perch, bass, channel catfish, alewife, gizzard shad, carp, goldfish, freshwater drum, and emerald shiner.

The bottom-dwelling community is composed primarily of wide-spread and abundant chironomids and oligochaetes which are major food items for fish. Also distributed on and with the bottom are polychaete worms, caddis flies, coelenterates, flatworms, molluscs, amphipods, isopods, and other crustaceans. Two dozen species of freshwater mussel have been found on various substrates within the site.

Thunder Bay (Lake Huron), Michigan

This site includes Thunder Bay and vicinity (up to Middle Island) extending out to 83° W. Depths extend to over 399 feet (91 m) along the northeast section of the site. Altogether, the site has an area of approximately 400 mi² (1,034 km²) and is entirely within Michigan State waters.

The underwater limestone sinkhole, the large concentration of historical shipwrecks, and the proximity of the Michigan Islands National Wildlife Refuge establish this area as a particularly valuable historical, educational, and recreational resource.

There is a variety of biological riches in the Thunder Bay area. March vegetation along the edges of the

Michigan Islands provides a habitat and breeding area for thousands of colonial nesting birds such as ring-billed gulls, common terns, and herring gulls. Thunder Island alone hosts 11,000 breeding pairs of shorebirds. The area also serves as a habitat for 20 species of gamefish. Chinook salmon, rainbow trout, brown trout, splake, and steelhead are annually stocked by the Michigan Department of Natural Resources in the inland rivers that feed Thunder Bay.

Green Bay (Lake Michigan), Michigan and Wisconsin

The site covers an area of approximately 1,300 mi^2 (3,300 km^2) of Michigan and Wisconsin waters in Green Bay and part of Lake Michigan. The site consists of upper and lower units. The upper region is unpolluted and supports an existing (and potentially greater) fishery and important nursery and spawning grounds. The lower portion of the Bay is estuarine and contains warm water. Lower Green Bay is extremely polluted and highly eutrophic, although a concerted local, State, and Federal effort is continuing to improve water quality.

Over 37 species of fish spawn in the area. Salmon and lake trout are stocked by both State and Federal programs. A drastic depletion of certain fish populations occurred during recent

times. Cisco are greatly reduced in number and the once common lake sturgeon is now endangered.

Introduction of exotic species, such as German carp, alewife, ocean smelt, and sea lamprey, have markedly affected fish species composition in the area.

Bottom-dwelling tubificid worms and midge larvae, generally recognized as indicators of poor environmental quality, are abundant near the middle and south portions of the Bay. The pollution-intolerant "shrimp" *Pontoporeia affinis* inhabits the northern Bay bottom.

Apostle Islands (Isle Royale), Lake Superior, Wisconsin

This site, composed of two important subunits, encompasses a total of 1,031 mi^2 of Wisconsin and Michigan waters situated in the western half of Lake Superior. One unit, roughly 375 mi^2 (970 km^2), of the site lies adjacent to the Federally owned Apostle Islands National Lakeshore. The boundaries of this park extend $\frac{1}{4}$ mile (0.4 km) into Lake Superior. The proposed site would include submerged lands beyond this boundary owned by the State of Wisconsin. The second unit consists of 656 mi^2 (1,700 km^2) of Michigan State waters and submerged lands surrounding Isle Royale National Park to a depth of 800 feet (183 m). Eastward of

Blake Point, the site boundary extends offshore (Isle Royale) a maximum distance of approximately 11.5 mi (18.5 km).

The waters surrounding the Apostle Islands and Isle Royale represent an important habitat, feeding and breeding grounds for commercially and recreationally important fish and wildlife. Twenty-one species of fish are known to spawn in these waters. Two unusual forms of lake trout, the Siskiwit and the "humper" have been found to inhabit the deeper waters of the site. The pygmy whitefish is known to occur only in Lake Superior.

The waters in and around the islands in this region are used extensively as breeding, nursery, and feeding areas for more than 43 species of birds and ducks, including such fish-eating birds as the common loon, bald eagle, osprey, mergansers, and endangered double-crested cormorants which are making a comeback.

(Federal Domestic Assistance Catalog No. 11-419 Coastal Zone Management Program Administration)

Dated: July 27, 1983.

K. E. Teggart,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

(73 Dec. 52-20248 Filed 8-3-83; 9:45 am)

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ATTACHMENT II

Sanctuary Designation Process

As provided by the 1984 Amendments
to the
Marine Sanctuaries Act of 1972

Principal Task	Procedural Steps	Notification and Documentation
Site Evaluation List (SEL) established	Final SEL ↓ NOAA selects site from SEL ↓ Preliminary Consultation ↓	<ul style="list-style-type: none"> • FR⁴ Notice • FR Notice, Written Analysis of how Site Meets SEL Criteria • Public Notice • Disseminate Written Analysis
Active Candidates Identified (Active Candidate Selection Starts NEPA ¹ Process)	NOAA Selects Active Candidate ↓ Regional Scoping Meeting ↓ Prospectus to Congress for Review; DEIS ² , Draft Management Plan (Including Proposed Regulations) & Public Hearing ↓ FEIS ³ , Final Management Plan ↓	<ul style="list-style-type: none"> • FR Notice, Public Notice • FR Notice & Public Notice • FR Notice
Sanctuary Designation	Designation by Secretary of Commerce and Issuance ↓ Congressional and Gubernatorial Review (90 days) ↓ Implementation of Management Plan	<ul style="list-style-type: none"> • FR Notice of Designation

¹ National Environmental Policy Act

² Draft Environmental Impact Statement

³ Final Environmental Impact Statement

⁴ Federal Register

TESTIMONY OF REP. ROBERT J. LAGOMARSINO
at the Joint Subcommittee Hearing on
Reauthorization of the Marine Protection, Research
and Sanctuaries Act of 1972
April 19, 1988

CHAIRMAN STUDDS, CHAIRMAN LOWRY, MEMBERS OF THE COMMITTEE, I AM PLEASED TO APPEAR BEFORE YOU TODAY IN SUPPORT OF REAUTHORIZATION OF THE MARINE PROTECTION, RESEARCH AND SANCTUARIES ACT OF 1972.

AS THE COMMITTEE KNOWS, IT WAS IN THE SANTA BARBARA CHANNEL IN THE DISTRICT I REPRESENT THAT THE EVENT OCCURRED WHICH LED, MANY OF US FEEL, TO THE PASSAGE OF THE MARINE SANCTUARIES ACT IN 1972. THE OIL WELL BLOW-OUT ON PLATFORM "A" IN JANUARY, 1969, PLAYED A MAJOR ROLE IN LAUNCHING THE ENVIRONMENTAL MOVEMENT IN THE UNITED STATES. ONE RESULT OF THIS EVENT WAS THE ENACTMENT BY THE CALIFORNIA LEGISLATURE OF A BILL I AUTHORED CREATING A 200-SQUARE MILE SANCTUARY AROUND THE SANTA BARBARA CHANNEL ISLANDS. ANOTHER WAS THE PASSAGE BY CONGRESS IN THE SAME YEAR OF THE MARINE PROTECTION, RESEARCH AND SANCTUARIES ACT OF 1972.

IN 1980, CONGRESS ENACTED LEGISLATION WHICH I AUTHORED CREATING THE CHANNEL ISLANDS NATIONAL PARK, GIVING PERMANENT PROTECTION TO THIS UNIQUE NATIONAL RESOURCE; AND IN 1981, THE AREA FOR SIX MILES AROUND THE ISLANDS WAS DESIGNATED A NATIONAL MARINE SANCTUARY, JOINING SANCTUARIES OFF

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NORTH CAROLINA AND FLORIDA AS PART OF THE MARINE SANCTUARIES SYSTEM. SINCE THAT TIME, THE COMBINED DESIGNATIONS OF THE CHANNEL ISLANDS NATIONAL PARK, THE STATE SANCTUARY AND THE FEDERAL MARINE SANCTUARY HAVE SERVED WELL TO PROTECT THIS CRITICAL RESOURCE.

LAST SEPTEMBER HOWEVER, AN EVENT OCCURRED WHICH THREATENED BOTH THE SANCTUARIES AND THE PARK. A COLLISION BETWEEN TWO FOREIGN-FLAG VESSELS--THE PAC BARONESS, A LIBERIAN-REGISTERED ORE CARRIER, AND THE ATLANTIC WING, A PANAMANIAN-REGISTERED FREIGHTER CARRYING AUTOMOBILES--OCCURRED APPROXIMATELY 12 MILES OFF POINT CONCEPTION, AT THE WESTERN ENTRANCE TO THE CHANNEL. THE PAC BARONESS SANK, AND ALMOST IMMEDIATELY BEGAN LEAKING BUNKER C FUEL OIL. WITHIN THREE DAYS, THE RESULTING OIL SLICK HAD EXPANDED TO 18-SQUARE MILES, AND WAS THREATENING TO COME ASHORE ON SAN MIGUEL ISLAND, THE WESTERN-MOST OF THE ISLANDS AND THE BREEDING GROUND FOR SEA LIONS AND ELEPHANT SEALS.

I FLEW OVER THE SLICK, ACCOMPANIED BY THE COAST GUARD AND BY MY COLLEAGUE ELTON GALLEGLY, AND AT OUR REQUEST, THE COAST GUARD AGREED TO CONVENE A BOARD OF INQUIRY INTO THE ACCIDENT. FORTUNATELY, A SHIFT IN THE WINDS AND CURRENTS PREVENTED THE SLICK FROM REACHING THE ISLANDS, BUT IT WAS CLEAR THAT HAD THE WRECK OCCURRED A FEW MILES TO THE EAST, OR HAD INVOLVED A OIL TANKER, THAT THE SANCTUARY AND THE PARK WOULD HAVE SUSTAINED DAMAGE.

AT MY REQUEST, MEMBERS OF THE FULL COMMITTEE JOINED ME IN SANTA BARBARA LAST YEAR TO COLLECT TESTIMONY ON

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THE EVENT, AND IN DECEMBER, THE COAST GUARD AND NAVIGATION SUBCOMMITTEE HELD A HEARING IN WASHINGTON, D.C. TO CONSIDER LEGISLATIVE REMEDIES.

MY BILL, H.R. 3772, THE SANTA BARBARA CHANNEL PROTECTION ACT, WAS THE OUTGROWTH OF THOSE HEARINGS. FIVE MEMBERS OF THE FULL COMMITTEE--INCLUDING MRS. SAKAI AND MSSRS. DAVIS, YOUNG, SHUMWAY AND HERGER, AS WELL AS CONGRESSMAN GALLEGLY, JOINED ON THE BILL AS COSPONSORS. THE BILL CONTAINS FIVE TITLES, COVERING A NUMBER OF SUGGESTIONS MADE AT THE EARLIER HEARING, RANGING FROM IMPROVED NAVIGATIONAL AIDS AND VESSEL TRAFFIC CONTROL TO TUG AND FIREBOAT PROTECTION. WE FEEL THE BILL EMBODIES A COMPREHENSIVE APPROACH TO THE PARTICULAR PROBLEMS AT THE CHANNEL ISLANDS MARINE SANCTUARY, AND HOPE THAT IT WILL RECEIVE FAVORABLE CONSIDERATION.

IN PARTICULAR, MR. CHAIRMAN, I'D LIKE TO DIRECT THE COMMITTEE'S ATTENTION TO TITLE IV OF THE BILL, THE NATURAL RESOURCE PROTECTION TITLE; AND I WANT TO ACKNOWLEDGE AT THIS POINT, THE DEBT WHICH WE OWE TO THE CHAIRMAN, MR. STUDDS, WHOSE H.R. 3640 IS THE BASIS FOR TITLE IV IN MY BILL. I AM PLEASED TO BE A COSPONSOR OF H.R. 3640.

UNDER TITLE III OF THE MARINE PROTECTION, RESEARCH AND SANCTUARIES ACT, THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA) MAY ASSESS CIVIL PENALTIES FOR VIOLATIONS OF SANCTUARY REGULATIONS. ALTHOUGH THERE IS NO EXPLICIT AUTHORITY TO RECOVER MONETARY DAMAGES FOR HARM TO SANCTUARY RESOURCES, NOAA HAS BROUGHT TWO SUCCESSFUL LAWSUITS ON THIS BASIS.

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TITLE IV OF MY BILL ADDRESSES PROBLEMS WHICH WERE ENCOUNTERED BY NOAA AND THE JUSTICE DEPARTMENT IN THE PURSUIT OF THESE CASES, AND BOTH AGENCIES WERE CONSULTED IN DEVELOPING THIS TITLE. FIRST, TITLE IV GRANTS NOAA EXPLICIT AUTHORITY TO BRING RESOURCE DAMAGE ACTIONS, TO RESPOND TO INCIDENTS THREATENING OR HARMING SANCTUARY RESOURCES, AND TO ASSESS THE DAMAGES THAT WILL BE SOUGHT FOR INJURY TO SANTUARY RESOURCES. IT ALSO MAKES PERSONS WHO HARM SANCTUARY RESOURCES, AND ANY VESSELS USED IN SUCH ACT, LIABLE.

SECOND, H.R. 3772 AUTHORIZES THE CREATION OF A SPECIAL FUND TO RECEIVE MONETARY DAMAGES COLLECTED UNDER THE ABOVE AUTHORITY. UNDER CURRENT LAW, FUNDS RECOVERED ARE DEPOSITED IN THE GENERAL FUND OF THE TREASURY. RATHER THAN BEING EARMARKED TO REPAIR OR ENHANCE THE DAMAGED RESOURCE OR OTHERWISE USED BY NOAA TO BENEFIT THE INJURED RESOURCE.

THIRD, THE BILL CORRECTS A PROBLEM EXPERIENCED BY THE JUSTICE DEPARTMENT WHEN IT ATTEMPTED TO SERVE PROCESS ON THE OWNER OF THE FOREIGN-FLAG VESSEL, THE M/V WELLWOOD, WHICH RAN AGROUND IN THE KEY LARGO MARINE SANCTUARY. A FINAL POINT MADE BY THE BILL IS TO CREATE A REBUTTABLE PRESUMPTION OF CORRECTNESS WHEN DAMAGES ARE ASSESSED UNDER REGULATIONS PREPARED BY THE DEPARTMENT OF THE INTERIOR. THIS ALLOWS NOAA THE FLEXIBILITY TO CALCULATE DAMAGES TO SANCTUARY RESOURCES IN A DIFFERENT MANNER THAN THAT DETAILED IN THE INTERIOR REGULATIONS, BUT ALSO RECOGNIZES THE STRENGTH OF THOSE REGULATIONS.

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PENALTIES RECOVERED UNDER THIS PROVISION ARE TO BE DISTRIBUTED IN THE FOLLOWING ORDER OF PRIORITY:

(1) TWENTY PERCENT, OR UP TO \$750,000, TO BE PLACED IN A NATIONAL MARINE SANCTUARY EMERGENCY RESPONSE AND DAMAGE ASSESSMENT FUND. THIS WILL PROVIDE NOAA WITH SEED MONEY TO QUICKLY RESPOND TO EMERGENCIES OR THREATS TO SANCTUARY RESOURCES AND HELP FUND THE ECONOMIC AND SCIENTIFIC ANALYSES REQUIRED TO DETERMINE THE EXTENT OF THE HARM SUFFERED BY THE SANCTUARY. IN ADDITION, THIS WILL SAFEGUARD THE FUNDS APPROPRIATED TO THE SANCTUARY PROGRAM FOR ON-SITE MANAGEMENT AND ENFORCEMENT, WHICH HAVE BEEN REDIRECTED IN THE PAST FOR EMERGENCY RESPONSE AND DAMAGE-ASSESSMENT ACTIVITIES.

(2) TO RESTORE OR REPLACE DAMAGED RESOURCES, OR TO ACQUIRE EQUIVALENT SANCTUARY RESOURCES. THIS CONCEPT DERIVES FROM THE SUPERFUND LAW, WHERE PENALTIES FROM PARTIES RESPONSIBLE FOR POLLUTING AN AREA ARE USED TO MAKE THE SITE WHOLE.

(3) TO REIMBURSE THE NATIONAL MARINE SANCTUARY PROGRAM EMERGENCY RESPONSE AND DAMAGE ASSESSMENT FUND FOR COSTS INCURRED. THIS WILL ENSURE THAT FUNDS WILL BE AVAILABLE FOR THE NEXT INCIDENT.

(4) TO MANAGE THE DAMAGED MARINE SANCTUARY; OR

(5) TO MANAGE ANY OTHER NATIONAL MARINE SANCTUARY.

TITLE IV WOULD APPLY TO THE PROSPECTIVE PAYMENTS MADE UNDER THE SETTLEMENT AGREEMENT OF THE TWO NOAA CASES, AND TO ANY OTHER FUNDS RECOVERED AFTER NOVEMBER 30, 1986.

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I FEEL, MR. CHAIRMAN, THAT THE CHANGES PROPOSED IN TITLE IV OF MY BILL WOULD HELP ENSURE THAT THOSE WHO DAMAGE OUR MARINE RESOURCES WILL BEAR THE LIABILITY FOR CORRECTING THOSE DAMAGES, AND THAT ADEQUATE FUNDS WILL BE AVAILABLE FOR TAKING EMERGENCY ACTION WHENEVER THE NEED ARISES. THE WRECK OF THE PAC BARONESS PROVIDES A WARNING THAT WE CAN ONLY IGNORE AT OUR PERIL. LET'S NOT WAIT FOR ANOTHER CATASTROPHE TO STRIKE, AS IT DID IN 1969 AND AGAIN LAST YEAR.

THANK YOU FOR PROVIDING THIS OPPORTUNITY TO ADDRESS THIS ISSUE AND I'D BE HAPPY TO ANSWER ANY QUESTIONS.

STATEMENT OF HON. DANTY FASCELL, A U.S. REPRESENTATIVE FROM FLORIDA

Messrs. Chairmen, I very much appreciate having the opportunity to appear before you today to express my very strong support for H.R. 4208, to reauthorize the National Marine Sanctuary Program. My congressional district is probably the only one in the country with two sanctuaries and there can be no question that their designation as such has been critical to the preservation of the very delicate ecology of the coral reefs.

I know you will have many experts attesting to the scientific reasons for continuing this valuable program and I will not take up additional time by restating their arguments. However, I would like to suggest that not only must the program be reauthorized, but I believe that many of the remaining tracts of living coral reefs in the Florida Keys should be examined for possible inclusion in the Program, either as an addition to the two sanctuaries already in the Keys--Key Largo and Looe Key National Marine Sanctuaries--or as separate sanctuaries.

As the members of these Subcommittees know, the Florida Keys are of tremendous environmental wealth and splendor. The area hosts the largest coral reef system in the North American continent. It is a virtual underwater garden, portions of which have already been protected, as we have discussed, by inclusion in the National Marine Sanctuary Program.

There are other tracts of this fragile coral reef in the region,

however, which are not currently protected, and these areas are continually jeopardized by the increasing recreational use of the area. The tourism industry in South Florida and the Florida Keys has exploded in recent years, and the increasing popularity of diving expeditions to the delicate coral reefs, in particular, have resulted in what may be long-term, irreparable damage to this fragile and unique spectacle.

I believe that these conditions make it imperative that a process be initiated whereby a study is conducted by the National Oceanic and Atmospheric Administration (NOAA) to determine the need for protection of all or part of this delicate reef system by inclusion in the National Marine Sanctuary Program. If this study concludes that these areas should be protected, the Secretary of Commerce would then have the discretion to determine the appropriate action, in accordance with the procedures for the designation of national marine sanctuaries established in title III of the Act. I am looking forward to cooperating with the Chairmen and members of these Subcommittees in whatever way I can to facilitate such a process.

As a further measure of protection for the reef system, I have cosponsored H.R. 3640, which I understand you are considering including in the reauthorization bill. H.R. 3640 would establish a resource mitigation fund, similar to that which already exists in the case of oil spills, whereby the fines paid by anyone who causes damage to a reef within the National Marine Sanctuary System would be used specifically for the repair of the reef. I think it is extremely important to have these monies dedicated to the restoration of the resource, rather than going into the general treasury and having the resource manager compete for it along with everyone else in government. Prompt action in the case of reef damage is essential to survival.

I would like to suggest that the provisions of this measure be

expanded to include underwater resources of the National Park Service as well.

In December, 1986, a freighter went aground in Biscayne National Park and damaged 6,000 square feet of living coral reef. This reef is actually an extension of the same reef system that is protected in the Key Largo National Marine Sanctuary although administratively, it is within a unit of the National Park Service. The company owning the freighter was cited and fined for the damage and settled out of court in the amount of \$40,000. However, this money was not given directly to Biscayne National Park for repair of the damage but was, rather, deposited in the general treasury. The Park Service then had to request a separate appropriation for the amount of the court settlement and was not successful in its request. In the meantime, the portion of the reef that was damaged has died.

The National Park Service has testified several times that persons damaging park resources should pay for those damages and that those funds should be returned to the Park Service.

I will leave to the discretion and expertise of your committee and of our colleagues on the Interior and Insular Affairs Committee the details as to how the mitigation fund should be administered and what special conditions should be imposed on it. However, both agencies--NOAA and the National Park Service--are charged with the responsibility of protecting these valuable reefs and both should be included in the provisions of a mitigation fund program. You may wish to establish one fund for both agencies or two separate ones; you may wish to restrict its use to submerged natural and cultural resources in marine--rather than fresh water--environments; there may be other factors affecting resources in other parts of the country that need addressing with which I am not familiar.

I do understand that in addition to Biscayne National Park,

Everglades National Park and Ft. Jefferson National Monument--all of which are in my congressional district in South Florida--other Park Service units which have primarily submerged resources and would benefit most from such legislation include Buck Island Reef National Monument and Virgin Islands National Park in the Virgin Islands and Channel Islands National Park in California. Other potential beneficiaries are Acadia National Park in Maine; Fire Island National Seashore, New York; Assateague National Seashore, Maryland; Canaveral National Seashore, Florida; Cape Cod National Seashore, Massachusetts; Cape Hatteras National Seashore and Cape Lookout National Seashore in North Carolina; Cumberland Island National Seashore, Georgia; Glacier Bay National Park and Preserve, Alaska; Gulf Islands National Seashore in Florida, Alabama and Mississippi; Olympic National Park, Washington; Padre Island National Seashore, Texas; and Point Reyes National Seashore, California.

Chairmen, again I want to express my gratitude for the time you have given me today and my commendation for the excellent job you have done in the past in crafting the legislation which has been so important to the preservation of our valuable natural resources.

TESTIMONY
OF
JOHN J. CAREY
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
DEPUTY ASSISTANT ADMINISTRATOR FOR OCEAN SERVICES
AND COASTAL ZONE MANAGEMENT
U.S. DEPARTMENT OF COMMERCE

BEFORE THE

SUBCOMMITTEE ON OCEANOGRAPHY
AND
SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION
AND THE ENVIRONMENT
COMMITTEE ON MERCHANT MARINE AND FISHERIES
HOUSE OF REPRESENTATIVES

APRIL 19, 1988

Mr. Chairman and Members of the Subcommittees:

I am John Carey, Deputy Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration (NOAA).

In 1984, we last appeared before these two Subcommittees to discuss reauthorization of Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, which is the legislative authority for our National Marine Sanctuary Program. Since 1984, we have designated a seventh National Marine Sanctuary, Fagatele Bay in American Samoa; are in the process of designating three additional sanctuaries (Cordell Bank, Flower Garden Banks, and Norfolk Canyon); and have made substantial progress in improving our management of the sanctuaries. A description of the existing seven sanctuaries and the three in the process of designation is attached to my written statement.

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REAUTHORIZATION

The Administration supports reauthorization of Title III at a level of \$2,325,000 for FY 1989 and such sums as may be necessary for FY 1990.

Attached to my testimony is a draft legislative proposal which we transmitted to the Congress on April 14. Our proposal would reauthorize Title III at the levels I have indicated and make several technical amendments to that Title. The first would restore the authority under Title III for the Secretary of Commerce to enter into agreements with the States regarding enforcement of sanctuary regulations. In the past, the Secretary has entered into mutually beneficial agreements with the States of Florida and California for their agents to handle much of the on-the-water enforcement workload within the Key Largo, Looe Key, Channel Islands, and Gulf of the Farallones National Marine Sanctuaries. The authority to enter into these types of agreements with the States formerly existed in Title III, but was inadvertently omitted when Title III was amended in 1984.

The second would restore the Secretary's authority to enter into enforcement agreements on a non-reimbursable basis. This authority also was omitted in 1984.

The third would clarify that violations of Title III include any violation of a permit issued under Title III.

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The fourth would empower authorized Federal and State enforcement officers to conduct searches, seize vessels, resources, and other items used or taken in violation of Title III including regulations and permits issued thereunder, and seek the forfeiture of such items.

The fifth would specify that items seized in connection with a violation are subject to forfeiture in accordance with the custom laws and would enable the Secretary or the Secretary of the Treasury to pay the reasonable and necessary storage and maintenance costs of seized property and to pay rewards for information concerning violations from sums received from fines, civil penalties, forfeitures of property, and imposed storage and maintenance costs. Any monies that the Secretary of Commerce receives from fines, civil penalties, forfeitures, or costs that the Secretary determines to be in excess of those necessary to pay storage and maintenance costs and rewards would have to be deposited in the United States Treasury.

All of these provisions are consistent with other resource statutes enforced by the Secretary, such as the Magnuson Fishery Conservation and Management Act.

FUTURE DESIGNATIONS

We have three sites in the process of being designated as national marine sanctuaries. As you are aware, the 1984

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amendments to Title III revised the designation standards and procedures. Generally, the 1984 amendments improved the program by strengthening affected public and Federal agency involvement, clarifying procedures, and improving resource protection. Because we are applying the revised designation standards and procedures to all new sites, including those that were in the designation process at the time of the 1984 amendments, there was some delay in our designation actions while we revised our designation regulations to comply with the 1984 amendments.

We are designating new sanctuaries at a pace which will allow us to integrate new sites into a well-managed national marine sanctuary system. Assuming favorable public comment, we intend to designate one new national marine sanctuary per year in FY 1988, FY 1989 and FY 1990, with on-site operations beginning in the following year.

Cordell Bank, in Federal waters twenty miles west of Point Reyes, California, should be designated by the end of FY 1988. We are now preparing the Final Environmental Impact Statement (EIS) and Management Plan in response to the nearly 200 comments received on the Draft EIS. Because of the proximity of the existing Gulf of the Farallones Sanctuary to the proposed Cordell Bank Sanctuary, we will jointly manage and operate these Sanctuaries, alleviating the need for additional funds.

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We plan to designate the Flower Garden Banks National Marine Sanctuary in FY 1989. The preliminary Draft EIS and Management Plan for this coral reef complex, located 115 miles south of the Texas/Louisiana coast, is under review within NOAA and should be available for public comment in July 1988.

This will be followed in late FY 1989 or early FY 1990 by the designation of the Norfolk Canyon National Marine Sanctuary, 60 nautical miles off the Virginia coast. We have already held the scoping meeting necessary to prepare the Draft EIS and Management Plan.

Regarding the issue of sanctuary designation beyond the seven already in existence and the three in progress, our next candidate will be selected from the Site Evaluation List (SEL), first developed in 1983. However, because we have seen little or no active State interest or support for designation of new candidates since 1984, and because the SEL is old, we will reopen the SEL for public comment prior to making a selection. We intend to seek public comments soon after August 1988, meeting the five year reevaluation cycle required by our regulations.

Based solely on developing a geographically representative system for the natural resources component of the National Marine Sanctuary Program, the most likely candidates should come from northeastern, northwestern, Great Lakes or Caribbean waters of the United States. However, our decision will be

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based on the resource most in need of immediate Federal management and protection.

As you know, the 1984 amendments added cultural and historical resources to the list of factors to be considered in designating sanctuaries. There is a need to protect marine historical and cultural resources of national significance through designation of national marine sanctuaries. However, how we proceed and the level of protection we can provide to these resources depends to some degree on Congressional action to provide the Secretary of Commerce with additional authority, either in the form of United States title to shipwrecks of special national significance or some other protection mechanism, as we recommended in our comments on S. 858 to the full Committee.

In response to the 1984 amendments, we are developing a separate SEL for historical and cultural resources, such as the Monitor. Public support of such activities is amply demonstrated by the more than 1,000 letters we received from citizens across the United States in response to the Sunday December 20, 1987 article on the Monitor National Marine Sanctuary which appeared in Parade Magazine. We have been proceeding cautiously, but deliberately, in the area of historical and cultural resources because of the need to test new technology and methodology, as well as the possibility of breaking new legal ground.

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IMPROVING PROGRAM OPERATIONS

Since 1984, we have made significant improvements in resource management using our existing authority. For example:

1. We have almost completed the standardization of the penalty schedules for violations of the regulations governing each sanctuary. Five of the seven sanctuaries now have standardized minimum and maximum penalties for similar violations. Each penalty collected goes to the United States Treasury.

2. We have supported sanctuary operations on the East and West Coast by hiring on-site staff necessary to protect the resources, assist researchers, and educate the public. We also have developed an on-site emergency response capability, which we have used in emergencies ranging from ship groundings to aiding a diver having a heart attack.

We are reviewing sanctuary operational procedures, regulations and enforcement, monitoring, and research and educational activities to determine where standardization can result in improved, cost-effective management of the resources. We believe the public deserves, and the resources are better protected by, a clear, predictable decisionmaking and management process.

Specific actions currently in process to improve our resource management capabilities include:

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1. Development of efficient research and education programs, comparable to those operating or under development in our National Estuarine Research Reserve System, which identify site specific and national priorities, provide a clear and predictable process for project submission, review and funding, and produce work products of value in managing our Nation's marine resources.

2. Review of the on-site regulations of existing national marine sanctuaries to ensure that comparable activities are handled in a similar manner throughout the national program.

3. Development of an on-site sanctuary manager's operations manual. The Program has reached the point where economics and simple good management require that routine activities, such as accounting procedures, policies on organizing symposia, response to groundings and resulting damage assessments, are handled in a similar fashion throughout the Program.

4. Review of the resources and regulations of existing sanctuaries to determine if we can better protect historical and cultural resources of national importance located within them. Actions such as these must occur prior to any significant expansion of the system beyond its current size.

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H.R. 3640 and H.R. 3772

We are presently reviewing H.R. 3640 and H.R. 3772, which pertain to the recovery of natural resource damages. We hope to be able to submit the Administration's position shortly.

NEED FOR CONCESSION AUTHORITY

We are presently considering the need for authorizing concessions in the national marine sanctuaries. While we do not have a position on this at present, it is clear that only concession activities that are compatible with the primary resource protection and management goals of Title III should be authorized. Further, concessions should be awarded on the basis of fair and open competition, and great care would have to be taken to ensure that existing local small businesses are not adversely affected by such awards. Authorized concession charges must be reasonable so that the public is not denied use of the sanctuaries.

CONCLUSION

In conclusion, we believe that our work during these times of ever tightening budgets has been effective. As the more than half a million 1987 visitors to Key Largo can attest, including resource managers from other countries who come to us for training, we are educating the public and protecting, managing, and undertaking research on the resources -- activities we look forward to continuing in the coming years.

ATTACHMENT TO TESTIMONY FOR THE REAUTHORIZATION OF TITLE III

DESCRIPTION OF DESIGNATED NATIONAL MARINE SANCTUARIES

Monitor National Marine Sanctuary. A one square nautical mile area surrounding the wreck of the historic Civil War ironclad, the U.S.S. Monitor. Designated in 1975, this was the nation's first National Marine Sanctuary. Several innovative designs gave the Monitor a tactical advantage over conventional broadside warships. She is popularly credited with revolutionizing naval warfare and saving the Union Navy during the famous battle of the ironclads off Hampton Roads, Virginia, in 1862.

Gray's Reef National Marine Sanctuary. A 17 square nautical mile area protecting a limestone outcrop supporting a rich community of sponges, soft and hard corals, sea turtles, tropical reef fish, and invertebrates. Designated in 1981, Gray's Reef occurs in a transition zone between the warm Gulf Stream and more temperate coastal waters. Located in relative isolation 17.5 nautical miles offshore Georgia, this site presents different management problems from the more populated sites in Florida.

Key Largo National Marine Sanctuary. A 100 square nautical mile area off the Florida Keys encompassing a spectacular portion of the largest coral reef system off North America. Designated in 1975, the Sanctuary is adjacent to the John Pennkamp Coral Reef State Park, and receives hundreds of thousands of visitors every year. Activities include fishing, skin and scuba diving, and sightseeing from glass bottom boats.

Looe Key National Marine Sanctuary. A 5.3 square nautical mile reef area located 6.7 miles offshore the lower Florida Keys. Designated in 1981, the site protects a classic example of the Florida reef-tract "spur-and-groove" formation. Like Key Largo, this site is heavily used by skin and scuba divers, commercial fishermen and boating tourists.

Channel Islands National Marine Sanctuary. A 1,252 square nautical mile area located off the southern California coast. Designated in 1980, this site supports one of the largest and most varied assemblages of marine mammals in the world. It also provides refuge for a diverse concentration of pinnipeds (seals and sea lions), and includes the most extensive kelp beds remaining in southern California.

Gulf of the Farallones National Marine Sanctuary. A 948 square nautical mile area northwest of San Francisco, encompassing a wide variety of offshore and nearshore habitats characteristic of the northeastern Pacific. Designated in 1981, this site provides food and nesting habitat to a large and unique concentration of seabirds. Whales, porpoises, and pinnipeds also are abundant.

Fagatele Bay National Marine Sanctuary. A 163 acre bay off Tutuila Island, American Samoa. Designated in 1986, the Sanctuary contains deep water coral terrace formations unique to the high islands of volcanic origin in the tropical Pacific, and offers the opportunity to investigate reef management problems such as crown-of-thorns starfish (Acanthaster) infestation.

ACTIVE CANDIDATES FOR DESIGNATION

Cordell Bank. An 18.4 to 397 square nautical mile area of Federal waters adjacent to the northern boundary of Gulf of the Farallones National Marine Sanctuary is under review by NOAA. Designation of this northernmost seamount is planned for FY 1988; the Final Environmental Impact Statement and Management Plan is being prepared. The area is noted for its wide variety of bottom organisms, unusual number of finfishes, marine mammals and seabirds.

Flower Garden Banks. This 44 square mile site is located 115 miles south of Galveston, Texas. The Banks represent the northernmost shallow-water tropical coral reef community in the Gulf of Mexico. A Draft Environmental Impact Statement and Management Plan should be released in the summer of 1988, with designation planned for FY 1989.

Norfolk Canyon. This deepwater submarine canyon is located approximately 60 nautical miles off the Virginia coast. The site supports an abundance of marine life including tree corals and "pueblo village"-like invertebrate and finfish communities. A scoping meeting was held in June 1986 and a Draft Environmental Impact Statement and Management Plan is being prepared. Designation is planned for FY 1990.

A BILL

To amend Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, to authorize appropriations for such title for fiscal years 1989 and 1990, and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, that Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (16 U.S.C. §§ 1431-39), is amended --

(1) By revising section 308 (16 U.S.C. § 1438) to read as follows:

"To carry out this title, there are authorized to be appropriated:

- (1) \$2,325,000 for fiscal year 1989.
- (2) Such sums as may be necessary for fiscal year 1990.";

(2) By revising subsection 307(a) (16 U.S.C. § 1437(a)) to read as follows:

"(a) In General. -- The Secretary shall conduct such enforcement activities as are necessary and reasonable to carry out this title. The Secretary shall, whenever appropriate, utilize by agreement the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities, and State departments, agencies, and instrumentalities, on a reimbursable or nonreimbursable basis in carrying out the Secretary's responsibilities under this title.";

(3) By adding the phrase "or permit" after the word "regulation" in subsections 307(b)(1) and (3) and by adding the phrase "or any permit" after the word "regulations" in subsection 307(c);

(4) By redesignating subsections 307(b) and (c) (16 U.S.C. §§ 1437(b) and (c), respectively) as subsections 307(d) and (e), respectively;

(5) By inserting after subsection 307(a) the following new subsections 307(b) and (c):

"(b) Powers of Authorized Officers. -- Any officer who is authorized by the Secretary, the Secretary of the department in which the Coast Guard is operating, or the head of any Federal or State department, agency, or instrumentality that has entered into an agreement with the Secretary under subsection (a) to enforce the provisions of this title may --

"(A) with or without a warrant or other process --

"(i) board, and search and inspect, any vessel that is subject to the provisions of this title;

"(ii) seize any vessel (together with its gear, furniture, appurtenances, stores, and cargo) used or employed in, or with respect to which it reasonably appears that such vessel was used or employed in, the violation of any provision of this title;

"(iii) seize any marine resource (wherever found) taken or retained in violation of any provision of the title; and

"(iv) seize any other evidence related to the violation of any provision of this title;

"(B) execute any warrant or other process issued by any court of competent jurisdiction; and

"(C) exercise any other lawful authority.

"(c) Construction. -- Nothing in this title shall be construed to limit the enforcement of this or any other applicable Federal law under section 89 of Title 14, United States Code."; and

(6) By adding at the end of section 307 the following new subsections 307(f) and (g):

"(f) Civil Forfeitures. --

"(1) Any vessel (including its gear, furniture, appurtenances, stores, and cargo) or other item used, and any marine resources taken or retained, in any manner, in connection with or as a result of the commission of any violation of a regulation or permit issued under this title shall be subject to forfeiture to the United States. Such vessel or other item may, and all such marine resources shall, be forfeited to the United States pursuant to a civil proceeding under this section. All provisions of the customs laws relating to the seizure, forfeiture, and condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under this title, insofar as such provisions of law are applicable and not inconsistent with this title; except that all powers, rights, and duties conferred by the customs laws shall be exercised by the Secretary.

"(2) Any marine resource seized pursuant to this title may be disposed of pursuant to an order of the appropriate court, or, if perishable, in a manner prescribed by regulations promulgated by the Secretary. Any proceeds from the sale of such resources shall for all purposes represent the items so disposed of in any subsequent legal proceedings.

"(3) For the purposes of this section it shall be a rebuttable presumption that all marine resources found on board a vessel that is seized in connection with an act prohibited by a regulation or permit issued under this title were taken or retained in violation of a regulation or permit issued under this title.

"(g) Payment of Storage, Care, and Other Costs. --

"(1) Notwithstanding any other provision of law, the Secretary or the Secretary of the Treasury shall pay from sums received from fines, civil penalties, forfeitures of property, or costs imposed under subsection 307(g)(3) for violations of a regulation or permit issued under this title --

"(A) the reasonable and necessary costs incurred in providing temporary storage, care, and maintenance of any seized marine resource or other property pending disposition of any civil or criminal proceeding alleging a violation of a regulation or permit issued under this title with respect to such resource or other property; and

"(B) a reward to any person who furnishes information leading to an arrest, conviction, civil penalty assessment, or forfeiture of property for violation of a regulation or permit issued under this title.

"(2) Any monies that the Secretary determines are in excess of those necessary to pay for the items set forth in subsections 307(g)(1)(A) and (B) shall be deposited in the United States Treasury.

"(3) Any person assessed a civil penalty for, or convicted of, a violation of a regulation or permit issued under this title, or any claimant in a forfeiture action brought for violation of a regulation or permit issued under this title, shall be liable for the cost incurred in storage, care, and maintenance of any marine resource or other property seized in connection with the violation concerned.".

STATEMENT OF PURPOSE AND NEED

Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (16 U.S.C. §§ 1431-39), authorizes the Secretary of Commerce to designate for protection as National Marine Sanctuaries areas of the marine environment of special national significance because of their resource or human-use values. Seven National Marine Sanctuaries have been designated to date.

The authorization of appropriations for Title III will expire September 30, 1988. Paragraph (1) of the bill reauthorizes Title III for two years at a level of \$2,325,000 for fiscal year 1989 and such sums as may be necessary for fiscal year 1990.

Paragraph (2) restores the Secretary's authority to enter into agreements with the States regarding enforcement of Sanctuary regulations. In the past, the Secretary has entered into mutually beneficial agreements with the States of Florida and California for their agents to handle much of the on-the-water enforcement of Sanctuary regulations workload within the Key Largo, Looe Key, Channel Islands, and Gulf of the Farallones National Marine Sanctuaries. The authority to enter into agreements with the States regarding enforcement of Sanctuary regulations formerly existed in Title III but was inadvertently omitted when Title III was amended by the Marine Sanctuaries Amendments of 1984 (Pub. L. No. 98-498).

The 1984 amendments also omitted a provision in Title III that allowed the Secretary to enter into enforcement agreements on a nonreimbursable basis. Paragraph (2) also restores this authority.

Paragraph (3) clarifies that violations of Title III include any violation of a permit issued under Title III by adding the words "or permit" after the word "regulation" in subsections 307(b)(1) and (3) and by adding the words "or any permit" after the word "regulations" in subsection 307(c).

Paragraph (4) redesignates subsections 307(b) and (c) as subsections 307(c) and (d), respectively.

While Title III grants broad enforcement authority to the Secretary, it does not specifically grant search and seizure powers to authorized enforcement officers. Most other resource statutes enforced by the Secretary, such as the Magnuson Fishery Conservation and Management Act, the Marine Mammal Protection Act, and the Lacey Act Amendments of 1981, specifically grant authorized officers the authority to conduct searches, seize vessels and other items used in a violation of the statute, and seize resources taken in violation of the statute. Paragraph (5) amends Title III specifically to grant search and seizure powers to authorized enforcement officers.

Title III also does not contain provisions regarding the forfeiture of seized items. Most of the other resource statutes enforced by the Secretary specify that items seized in connection with a violation of the statute are subject to forfeiture in accordance with the customs laws. Paragraph (6) adds such a provision to Title III. In addition, paragraph (6) adds a provision enabling the Secretary or the Secretary of the Treasury to pay the reasonable and necessary storage and maintenance costs of seized property and to pay rewards for information from sums received from fines, civil penalties, forfeitures of property, and storage and maintenance costs imposed. Such a provision is consistent with other resource statutes enforced by the Secretary, such as the Magnuson Fishery Conservation and Management Act. Any monies that the Secretary of Commerce receives from fines, civil penalties, forfeitures, or costs that the Secretary determines to be in excess of those necessary to pay storage and maintenance costs and rewards would have to be deposited in the United States Treasury.

Testimony by David E. Gackebach
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The National Park Service uses private industry (concessioners) to provide visitor services within the National Park System. These concessioners have a business relationship with the National Park Service and are charged with the chore of providing quality visitor services to the public visiting the parks.

Congress has provided guidance through the Concessions Policy Act, Public Law 89-249, in how the National Park Service is to administer the concessions program. The major provisions of the act are as follows:

- Development is to be limited to that which is necessary and appropriate.
- Encourage private persons and corporations to provide and operate facilities and services deemed desirable.
- Include provisions to assure concessioner of adequate protection against loss of investment resulting from discretionary acts, policies, or decisions occurring after the contract becomes effective. Such terms and conditions may include an obligation of the United States to compensate the concessioner for such losses.
- The Secretary shall provide the concessioner a reasonable opportunity to realize a profit.
- Concessioners' rates to the public shall be judged primarily with comparable facilities and services outside National Park Service areas.
- Fees to the government shall be determined upon the probable value of the privilege granted.
- May authorize preferential right to concessioners to provide additional services necessary or desirable for visitors.
- Shall give concessioners preference in renewal of contracts or permits upon expiration, if providing satisfactory service.
- Shall provide concessioners with a possessory interest (compensable interest) in facilities they construct pursuant to a contract.
- Exemption to recovery of actual cost for leasing or renting buildings to concessioners.
- Requires concessioners to keep records deemed appropriate by NPS.

The National Park Service implements this act through a series of published controls. Those controls are Code of Federal Regulations, Policies, and Guidelines. We basically plan ahead for visitor services through an elaborate planning process to determine the market, economics, design, and environmental consequences, and if the services are necessary and appropriate. A contract is then prepared that protects the government, provides incentive for private industry, allows flexibility, and finally, offers are evaluated to select the best possible operator from a financial, management, and meeting the terms and conditions of the solicitation standpoint.

Once the authorization is awarded, the contract is administered closely to assure contract compliance, assure concessioners performance through inspections based on performance standards, approve rates charged to the public, and that generally, the concessioner provides quality service to the public at reasonable rates.

Because of the experience gained through the past, the NPS has become the pilot and experienced agency in dealing with the private industry. Constant training to keep up with industry knowledge is of utmost importance.

In conclusion, the concession system can work well, and is working well for the National Park Service, if professionals in business and government are used together to develop and assist with the legislation, the regulations, proper policies, and field guidelines, with tools to provide proper oversight.

A well developed contract that is administered by business professionals and backed by the necessary rules, regulations and laws, can provide protection to the government to accomplish necessary concession services for the public. However, the mere issuing of a contract backed appropriately by legislation is, in its self, insufficient. It must be administered by professionals who know the business atmosphere, but yet have the public's and parks, best interest in mind.



Public Law 89-249
89th Congress, H. R. 2091
October 9, 1965

An Act

Relating to the establishment of concession policies in the areas administered by National Park Service and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That in furtherance of the Act of August 25, 1916 (39 Stat. 535), as amended (16 U.S.C. 1), which directs the Secretary of the Interior to administer national park system areas in accordance with the fundamental purpose of conserving their scenery, wildlife, natural and historic objects, and providing for their enjoyment in a manner that will leave them unimpaired for the enjoyment of future generations, the Congress hereby finds that the preservation of park values requires that such public accommodations, facilities, and services as have to be provided within those areas should be provided only under carefully controlled safeguards against unregulated and indiscriminate use, so that the heavy visitation will not unduly impair these values and so that development of such facilities can best be limited to locations where the least damage to park values will be caused. It is the policy of the Congress that such development shall be limited to those that are necessary and appropriate for public use and enjoyment of the national park area in which they are located and that are consistent to the highest practicable degree with the preservation and conservation of the areas.

National Park
Service.
Concession
policies.

SEC. 2. Subject to the findings and policy stated in section 1 of this Act, the Secretary of the Interior shall take such action as may be appropriate to encourage and enable private persons and corporations (hereinafter referred to as "concessioners") to provide and operate facilities and services which he deems desirable for the accommodation of visitors in areas administered by the National Park Service.

"Concessioners."

SEC. 3. (a) Without limitation of the foregoing, the Secretary may include in contracts for the providing of facilities and services such terms and conditions as, in his judgment, are required to assure the concessioner of adequate protection against loss of investment in structures, fixtures, improvements, equipment, supplies, and other tangible property provided by him for the purposes of the contract (but not against loss of anticipated profits) resulting from discretionary acts, policies, or decisions of the Secretary occurring after the contract has become effective under which acts, policies, or decisions the concessioner's authority to conduct some or all of his authorized operations under the contract ceases or his structures, fixtures, and improvements, or any of them, are required to be transferred to another party or to be abandoned, removed, or demolished. Such terms and conditions may include an obligation of the United States to compensate the concessioner for loss of investment, as aforesaid.

Contracts.

(b) The Secretary shall exercise his authority in a manner consistent with a reasonable opportunity for the concessioner to realize a profit on his operation as a whole commensurate with the capital invested and the obligations assumed.

Profits.

(c) The reasonableness of a concessioner's rates and charges to the public shall, unless otherwise provided in the contract, be judged primarily by comparison with those current for facilities and services of comparable character under similar conditions, with due consideration for length of season, provision for peakloads, average percentage of occupancy, accessibility, availability and costs of labor and materials, type of patronage, and other factors deemed significant by the Secretary.

Rates.

79 STAT. 969
79 STAT. 970

(d) Franchise fees, however stated, shall be determined upon consideration of the probable value to the concessioner of the privileges

Franchise
fees.

granted by the particular contract or permit involved. Such value is the opportunity for net profit in relation to both gross receipts and capital invested. Consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving the areas and of providing adequate and appropriate services for visitors at reasonable rates. Appropriate provisions shall be made for reconsideration of franchise fees at least every five years unless the contract is for a lesser period of time.

Contracts, extension, renewals, etc.

SEC. 4. The Secretary may authorize the operation of all accommodations, facilities, and services for visitors, or of all such accommodations, facilities, and services of generally similar character, in each area, or portion thereof, administered by the National Park Service by one responsible concessioner and may grant to such concessioner a preferential right to provide such new or additional accommodations, facilities, or services as the Secretary may consider necessary or desirable for the accommodation and convenience of the public. The Secretary may, in his discretion, grant extensions, renewals, or new contracts to present concessioners, other than the concessioner holding a preferential right, for operations substantially similar in character and extent to those authorized by their current contracts or permits.

SEC. 5. The Secretary shall encourage continuity of operation and facilities and services by giving preference in the renewal of contracts or permits and in the negotiation of new contracts or permits to the concessioners who have performed their obligations under prior contracts or permits to the satisfaction of the Secretary. To this end, the Secretary, at any time in his discretion, may extend or renew a contract or permit, or may grant a new contract or permit to the same concessioner upon the termination or surrender before expiration of a prior contract or permit. Before doing so, however, and before granting extensions, renewals or new contracts pursuant to the last sentence of section 4 of this Act, the Secretary shall give reasonable public notice of his intention so to do and shall consider and evaluate all proposals received as a result thereof.

Possessory interest.

SEC. 6. A concessioner who has heretofore acquired or constructed or who hereafter acquires or constructs, pursuant to a contract and with the approval of the Secretary, any structure, fixture, or improvement upon land owned by the United States within an area administered by the National Park Service shall have a possessory interest therein, which shall consist of all incidents of ownership except legal title, and except as hereinafter provided, which title shall be vested in the United States. Such possessory interest shall not be construed to include or imply any authority, privilege, or right to operate or engage in any business or other activity, and the use or enjoyment of any structure, fixture, or improvement in which the concessioner has a possessory interest shall be wholly subject to the applicable provisions of the contract and of laws and regulations relating to the area. The said possessory interest shall not be extinguished by the expiration or other termination of the contract and may not be taken for public use without just compensation. The said possessory interest may be assigned, transferred, encumbered, or relinquished. Unless otherwise provided by agreement of the parties, just compensation shall be an amount equal to the sound value of such structure, fixture, or improvement at the time of taking by the United States determined upon the basis of reconstruction cost less depreciation evidenced by its condition and prospective serviceability in comparison with a new unit of like kind, but not to exceed fair market value. The provisions of this section shall not apply to concessioners whose current contracts do not include recognition of a possessory interest, unless in a particular case the

79 STAT. 970

79 STAT. 971

October 9, 1965

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Pub. Law 89-249

79 STAT. 971

Secretary determines that equitable considerations warrant recognition of such interest.

SEC. 7. The provisions of section 321 of the Act of June 30, 1932 (47 Stat. 412; 40 U.S.C. 303(b)), relating to the leasing of buildings and properties of the United States, shall not apply to privileges, leases, permits, and contracts granted by the Secretary of the Interior for the use of lands and improvements thereon, in areas administered by the National Park Service, for the purpose of providing accommodations, facilities, and services for visitors thereto, pursuant to the Act of August 25, 1916 (39 Stat. 535), as amended, or the Act of August 21, 1935, chapter 593 (49 Stat. 666; 16 U.S.C. 461-467), as amended. 16 USC 1.

SEC. 8. Subsection (h) of section 2 of the Act of August 21, 1935, the Historical Sites, Buildings, and Antiquities Act (49 Stat. 666; 16 U.S.C. 462(h)), is amended by changing the proviso therein to read as follows: "Provided, That the Secretary may grant such concessions, leases, or permits and enter into contracts relating to the same with responsible persons, firms, or corporations without advertising and without securing competitive bids."

SEC. 9. Each concessioner shall keep such records as the Secretary may prescribe to enable the Secretary to determine that all terms of the concession contract have been and are being faithfully performed, and the Secretary and his duly authorized representatives shall, for the purpose of audit and examination, have access to said records and to other books, documents, and papers of the concessioner pertinent to the contract and all the terms and conditions thereof. Records.

The Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of five (5) calendar years after the close of the business year of each concessioner or subconcessioner have access to and the right to examine any pertinent books, documents, papers, and records of the concessioner or subconcessioner related to the negotiated contract or contracts involved. Availability.

Approved October 9, 1965, 6:35 a.m.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 591 (Comm. on Interior & Insular Affairs).
SENATE REPORT No. 765 (Comm. on Interior & Insular Affairs).
CONGRESSIONAL RECORD, Vol. 111 (1965):

Sept. 14: Considered and passed House.

Sept. 23: Considered and passed Senate.

AUTHORITY RIGHTS NOW UNDER TITLE III--LEGAL OPINION

I. Concession Authority

Legal opinions from the NOAA Office of General Counsel have pointed out that, unlike the National Park Service, we do not have express authority to enter into concession agreements in sanctuaries. Nor can we use our existing permit authority since these agreements are largely for uses outside the research and educational standards set for permits. Although Title III identifies enhancing wise use of the marine environment and facilitating public and private uses of marine sanctuary resources -- to the extent compatible with the primary objective of resource protection -- as important purposes of the Program, the current legislation only specifies "research and educational programs" (§306) and "enforcement activities" (§307) for onsite operations. Concession authority in the National Park Service dates back to 1916 and was further clarified in 1965 under the Concessions Policy Act. Congressional language in 1965 is very applicable to the needs faced in marine sanctuaries:

[T]he preservation of park values requires that such public accommodations, facilities, and services as have to be provided within those areas should be provided only under carefully controlled safeguards against unregulated and indiscriminate use, so that the heavy visitation will not unduly impair these values and so that development of such facilities can best be limited to locations where the least damage to park values will be caused. It is the policy of the Congress that such development shall be limited to those that are necessary and appropriate for public use and enjoyment...and that are consistent to the highest practicable degree with the preservation and conservation of the areas.

Recreational use of marine sanctuaries, and of the marine environment and coastal areas in general, is rising dramatically. Increases in coastal population, boat registrations, diver certifications, and marine-oriented educational and recreational programs are indicative of this trend. The marine resource management issues and environmental threats that resulted in the designation of marine sanctuaries years ago do not fully encompass present day pressures. The challenge now facing the Program is to maintain and improve the sites' resource qualities in light of the environmental stress brought on by unforeseen human use levels.

An example of the problems being faced can be found at NOAA's Florida sanctuaries where, despite increased enforcement of regulations coupled with outreach interpretive and educational programs, visitation often overwhelms onsite resources. Although in better condition than unprotected reefs outside the Sanctuary, several-heavily used reefs in Key Largo are showing obvious signs of "wear and tear" caused by large numbers of visitors. While NOAA has the authority to close part of the Sanctuary to permit recovery of living resources from overuse, such a drastic step could have negative ramifications and actually discourage public cooperation in protecting the area. Approximately sixty percent of the million visitors a year to the Key Largo sanctuary travel aboard commercial diveboats or glassbottom boats. Numbers of commercial vessels and their passenger capacities are escalating. The ability to award concessions is one equitable method to

distribute and control these uses and so allow enforcement personnel to focus on the pressures from non-commercial visitation.

Many of the types of activities subject to concession in national parks would not be appropriate in National Marine Sanctuaries. Food services, large-scale lodging or other accommodations, service stations, marinas, boat rentals, merchandising operations and the like are typically shore-oriented and would not be suitable for marine sanctuaries.

II. Donations and Cooperating Associations

Cooperating associations in the National Park System were developed in response to visitor needs for interpretive and related public services. Interested persons in communities near national parks joined with park personnel to form societies to produce and provide information to the public. Some of the National Estuarine Research Reserves already have such associations authorized under State statutes. Scientific programs that further understanding of the national park system can also be supported by cooperating associations. These associations can accept donations from the public and make donations to the National Park Service. The National Park Service has separate authorization to accept donations as well.

Since the 1984 reauthorization, NOAA has devoted considerable effort and resources to onsite operations. We have worked closely with local and statewide groups and agencies in the development of site-specific management programs. Our actions have been very successful, and have resulted in strong community support for the sites and offers of assistance to continue programs viewed as critical to the protection of marine resources. A proposal to restore the Carysfort Reef Lighthouse in Key Largo is already being developed by a non-profit group. Specific authority to establish cooperating associations analogous to those in the National Park Service, and for the Program to accept donations, would aid NOAA in channeling this public support into tangible, needed onsite projects. This authority should encompass support for research, as well as educational programs.

TESTIMONY OF HON. BILL ALEXANDER

ON

REAUTHORIZATION OF THE MARINE SANCTUARIES PROGRAM

BEFORE A JOINT HEARING OF
SUBCOMMITTEE ON OCEANOGRAPHY
AND

SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION AND THE
ENVIRONMENT

COMMITTEE ON MERCHANT MARINE AND FISHERIES
U. S. HOUSE OF REPRESENTATIVES

APRIL 19, 1988

Chairman Lowry, Chairman Studds, and members of the subcommittees, it is a pleasure for me to appear today before this joint hearing to support reauthorization of the Marine sanctuaries program. I am proud to be an original cosponsor of one of the reauthorization bills, H. R. 4208.

We do not have, and barring a flood of Biblical proportions we will not have, marine sanctuaries in the state of Arkansas. But as a diver, a certified aquanaut, and a member of the appropriations subcommittee with jurisdiction over the National Oceanic and Atmospheric Administration (NOAA), I am well aware of the value of this program.

I support increasing the authorized funding level for the Marine Sanctuaries program. If this nation is to preserve the unique ecosystems submerged off its coastline, government will have to expand and nurture the program.

I have only one suggestion for changing the program. Specifically, I recommend that you amend the Marine Protection, Research and Sanctuaries Act to give the Under Secretary of Commerce for Oceans and Atmosphere general authority to enter into concession arrangements at the various marine sanctuaries for such purposes and under such terms as he might deem necessary.

From my own personal experience, I am aware of one case in Florida where NOAA wished to enter into a concession agreement with a private company for the operation of a lighthouse which was under the jurisdiction of the Marine Sanctuaries Program. NOAA wanted to dispose of the lighthouse, and the private concern wanted to operate the lighthouse. The matter was noncontroversial.

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But, as the agreement neared consummation, NOAA's General Counsel informed NOAA officials that the agency did not have the authority under law to enter into such agreements.

A comparable land-based program, the National Park System, has had similar concession authority for more than two decades, since enactment of the Concessions Policy Act of 1965.

This arrangement would allow NOAA to enter into concession arrangements where doing so would facilitate NOAA's purposes. At the same time, NOAA would of course retain authority to prevent concessionaires from any action that would harm the protected marine environments.

Again, I thank you for allowing me to testify. I commend both subcommittees for the excellent work they are doing in this area, and I look forward to supporting the reauthorization legislation in the full House.



Center for
Environmental
Education

WRITTEN STATEMENT OF MICHAEL WEBER
VICE PRESIDENT FOR PROGRAMS OF THE
CENTER FOR ENVIRONMENTAL EDUCATION
BEFORE THE SUBCOMMITTEE ON OCEANOGRAPHY AND
THE SUBCOMMITTEE ON FISHERIES AND WILDLIFE
CONSERVATION AND THE ENVIRONMENT
REGARDING REAUTHORIZATION OF
TITLE III OF THE MARINE PROTECTION,
RESEARCH, AND SANCTUARIES ACT

ENDORSED BY:

AMERICAN CETACEAN SOCIETY
AMERICAN OCEANS CAMPAIGN
COAST ALLIANCE
DEFENDERS OF WILDLIFE
FRIENDS OF THE EARTH
GREENPEACE U.S.A.
NATIONAL AUDUBON SOCIETY
NATURAL RESOURCES DEFENSE COUNCIL
OCEANIC SOCIETY
SIERRA CLUB
WHALE CENTER

April 19, 1988

Whale Protection Fund • Seal Rescue Fund • Sea Turtle Rescue Fund • Marine Habitat Program

1725 DeSales Street, NW

Washington, DC 20036

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Mr. Chairman, members of the subcommittees, my name is Michael Weber and I am Vice President for Programs at the Center for Environmental Education (CEE). CEE is a non-profit citizens organization dedicated to the conservation of living marine resources, threatened and endangered species, and sensitive marine habitats.

Today I am testifying on behalf of the following organizations: American Cetacean Society, American Oceans Campaign, Coast Alliance, Defenders of Wildlife, Friends of the Earth, Greenpeace U.S.A., National Audubon Society, Natural Resources Defense Council, the Oceanic Society, Sierra Club, and the Whale Center.

We wish to thank you for the opportunity to present this statement regarding reauthorization of Title III of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972. Since 1980, CEE has devoted considerable effort toward promoting the goals and objectives of the national marine sanctuary program as part of our efforts to promote the conservation and wise use of marine resources, particularly threatened and endangered species and sensitive habitats.

As requested, our testimony this afternoon will emphasize several matters: the status of the sanctuary program, the need for its reauthorization, authority for concessions within sanctuaries, assessment of damages for destruction or harming of sanctuary resources, proposed sanctuary sites worthy of advancement, and finally, a matter of the greatest concern to us, an adequate budget for the program.

We compliment Chairman Lowry on introducing H.R. 4208 reauthorizing this program for four years.

STATUS OF THE PROGRAM

Within the 2.2 million square miles of ocean under its jurisdiction, the United States possesses an unrivalled diversity of marine ecosystems ranging from the coral reefs of the Florida Keys to the current eddies of the Beaufort Sea that blossom with life in the spring and summer. A great diversity of species depend upon the integrity and health of these marine environments for their own health and productivity. The goal of ensuring conservation and long-term use of these renewable marine resources is a large and complex one for which we need many different tools. This is true as well of the conservation of submerged cultural artifacts.

In 1972, Congress established the national marine sanctuary program when it passed Title III of the Marine Protection, Research, and Sanctuaries Act (16 U.S.C. 1431 et seq.). In doing so, Congress fashioned a tool for providing additional protection to outstanding marine areas for the benefit of all Americans. Marine sanctuaries have often been called the marine equivalents of our great national parks, because they aim at conserving distinctive parts of our cultural and natural heritage for the enjoyment of present and future generations of Americans. This aim is as worthy today as it was in 1972, or in 1872 for that matter, when Yellowstone was designated our first national park.

Unfortunately, the promise and potential of the sanctuary program have eroded in recent years and the program's progress has seriously faltered. As this Congress considers renewing Title III of the MPRSA, we urge you to breathe new life into this program and to recommit this nation to the protection of unique and representative parts of our rich marine heritage.

We will not discuss here the history of the program, except to note that the process of designating national marine sanctuaries has slowed tremendously. In sixteen years, only seven sanctuaries have been designated. In the last seven years, only one sanctuary, protecting a coral reef area in Fagatele Bay, American Samoa, has been designated. Meanwhile, the process of designating several very deserving sites has been bogged down, to say the least.

Cordell Bank provides a sorry example of what has happened to the national marine sanctuary program in the last seven years. Since Mark Palmer will be describing this area and the designation process, we will simply note that this small and discrete site, whose features include a tremendous array of species, including commercially and recreationally valuable fishes, was first nominated in 1981. In June 1983, the National Oceanic and Atmospheric Administration (NOAA) announced that it was actively considering this site. Yet it was only in May 1987 that NOAA finally released a draft environmental impact statement on the site.

NOAA currently estimates designation of Cordell Bank in September of this year, or 86 months after the site was first nominated. This compares very poorly with past sanctuary designations. Gulf of the Farallones, a much larger and more complicated site, took 19 months to designate after it was nominated by the state of California. Looe Key, currently the site with the longest process time, took 38 months, still half the time Cordell Bank has taken.

A sanctuary at Flower Garden Banks was first nominated by Texas State Senator A.R. Schwartz in September 1977 and was the subject of a draft environmental impact statement in April 1979. The proposal faltered and disappeared until NOAA elevated it to active candidate status again in August 1984. The Gulf of Mexico Regional Fishery Management Council endorsed a preliminary draft environmental impact statement and management plan for this site in early 1987. For more than one year, the preliminary draft management plan has been circulating in the executive branch. The current estimate is that the draft impact statement and management plan will be released in June 1988, nearly 48 months after the site was elevated to active candidate status.

This abysmal record is due partly to ridiculously low levels of funding. When Congress last reauthorized Title III in 1984, it provided \$2.9 million in appropriations. In the last four years, the administration has regularly requested less funding, while allowing staff positions to go unfilled; this year, the administration has requested only \$2.1 million for 1989. In the past, Congress has partially restored budget cuts. Even so, the program's funding has declined in nominal and actual value.

The administration's behavior in this respect is consistent with a

desire to see the program slowly disappear. It is unfortunate that Congress has gone along with the administration's program of neglect.

The results of inadequate funding are several. Neither the Fagatele Bay nor the Gray's Reef sanctuary has had an onsite manager. Research and education have been severely curtailed at all sites, and new initiatives cannot be undertaken. When emergency measures must be taken to prevent or reduce damage to sanctuary resources arising from an accident, the program's paltry operating budget is further reduced. And as we mentioned earlier, the processing of sanctuary proposals has nearly ground to a halt.

There appears to be little chance that the administration will enliven this program without some assistance from Congress. For fiscal year 1989, the administration has requested less funding than it received in 1988, although it promises to designate another sanctuary during the year. Will this be just another sanctuary without an onsite manager? Will it be simply a paper park? Congress must act dramatically if we are to have a viable program for protecting outstanding marine areas for the future.

THE SANCTUARY PROGRAM IS PAYING OFF

Despite these hindrances, the national marine sanctuary program is yielding important results. A visit to any one of the current sanctuaries will make clear the basic benefit of identifying these areas as special. Hundreds of thousands of tourists and divers visit the Key Largo sanctuary each year and benefit from even the limited protection the sanctuary program has been able to provide the spectacular coral reefs there. Absent the sanctuary program, the reefs in the sanctuary might well not have survived the onslaught of divers and tourists that have been attracted to them. As Congressman Dante Fascell has testified today, reefs in unprotected sections of the Keys are not withstanding increased tourist use.

And the benefits extend beyond the sanctuary. The mooring buoy system developed by the Key Largo sanctuary to reduce anchor damage to the reefs is being applied now elsewhere in the Florida Keys, in the Caribbean, and beyond.

At another sanctuary in the Florida Keys, Looe Key, the larger species of reef fish have returned to the reefs as a result of the ban on spearfishing in the area. No longer do these larger fish shy away from divers, as they did when spearfishing was allowed. The Looe Key reefs are also receiving protection from a mooring buoy system.

Research at the first sanctuary, the Monitor, has extended marine archaeological technology to greater depths than ever before. Congress recognized NOAA's growing expertise in conserving submerged cultural resources when it designated NOAA the lead agency in implementing the R.M.S. Titanic Maritime Memorial Act of 1986.

Channel Islands National Marine Sanctuary is providing a focus for coordinating government management programs and research in this heavily used and very sensitive area. Through its educational efforts, the

sanctuary is exposing more and more people to the ecology of this area. These efforts are very cost effective, relying increasingly on training teachers and enhancing existing programs. This, we agree, is a modest contribution, but a very important and critical one, because without these activities, the job of informing the public about such outstanding areas and the need for their conservation just will not get done. And in the end, the conservation of these areas, and of marine resources generally, depends upon a knowledgeable and caring public.

Gulf of the Farallones sanctuary is developing expertise in assessing damages to marine resources. In one case, the barge Apex Houston continuously released oil as it made its way along the northern California coast in February 1986. Some of this oil came ashore and some affected seabirds. When the state of California was unable to support an assessment of the damages, Gulf of the Farallones sanctuary provided support for the assessment and in doing so gathered experience in this continuing area of concern.

These and other accomplishments are due to the hard work and dedication of staff here in Washington and at the various sanctuary sites. They have made the very best of a very bad and unfriendly situation.

Finally, the national marine sanctuary program has provided benefits internationally. As one example, a NOAA sponsored seminar on the management of marine protected areas in June 1986 provided valuable guidance to 29 participants from 22 countries. Another workshop on interpretive techniques in marine protected areas was conducted at the 4th World Wilderness Congress last year. Associates of ours from the Dominican Republic attended both workshops and benefited greatly from the training and discussions.

In general, however, the last four years have been a setback for the national marine sanctuary program. NOAA has failed to avail itself of the 1984 amendments to Title III of the MPRSA that clarified the goals and purposes of the program and the process for designating sanctuaries. At the same time, the meager appropriations for implementation of Title III have only further eroded the program's capabilities.

Yet, the need for marine protected areas is even more widely recognized now than it was even two years ago. By 1987, 69 nations had designated 430 marine protected areas. At the 4th World Wilderness Congress, which was held in Colorado last September, people from around the world who are interested in marine protected areas met in a workshop for several days to discuss marine protected area programs. This workshop prepared a resolution on ocean conservation that was later approved by the hundreds of delegates attending this congress. Among other things, this resolution, which we have appended in full (Attachment 1), reiterates the importance of marine protected areas and includes the following primary goal:

To provide for the protection, restoration, wise use, understanding and enjoyment of the marine heritage of the world in perpetuity through the creation of a global, representative system of marine protected areas and through the management of human activities that use or affect the marine environment, consistent with the objectives

of the World Conservation Strategy.

A similar resolution confirming the need for a system of marine protected areas was approved at the most recent General Assembly of the International Union for Conservation of Nature and Natural Resources in San Jose, Costa Rica this past February.

Consistent with these international efforts, the challenge before us is to get the U.S. program moving again by making several programmatic and funding refinements.

COMMERCIAL ACTIVITIES IN NATIONAL MARINE SANCTUARIES

In recent months, there has been increasing discussion of providing NOAA with the authority to grant concessions for services in national marine sanctuaries. The witness from the Department of Interior has provided some very pertinent insights into technical aspects of this matter. We wish to make some general observations.

First, we have yet to hear a compelling case made for introducing the complicating influence of concessions into the national marine sanctuary program. Proponents have suggested that concessions might provide a source of sorely needed additional funding. But we doubt that such additional funding would amount to much or would even cover the government's expenses in insuring that the concession did not violate the goals of a sanctuary. Furthermore, the introduction of the prospect for increased revenues into the process of deciding whether to allow an activity within a sanctuary will likely lead to a relaxation of the standards of protection for sanctuary resources.

From another point of view, concession authority might provide a means for limiting certain activities that may harm sanctuary resources if carried on at excessive levels. But NOAA already has regulatory authority to restrict human activities if it is deemed appropriate. Why not rely upon that authority for control of human activities?

Marine sanctuaries must possess special national significance and for this reason, they must be treated in a special manner. Title III of the MPRSA rightfully places the emphasis upon resource protection and not upon multiple use. We believe this is a critical point. The sanctuary program should allow uses of sanctuary resources only if those uses contribute to the goals of the sanctuary and are compatible with protection of the resources that make the sanctuary area of special national significance. Perhaps in other marine areas we can afford the risks associated with applying multiple use as a management goal, but we should not impose those risks on outstanding areas that are designated national marine sanctuaries.

Clearly, we would not be discussing concession authority had NOAA not been asked for permission to construct a hotel on Carysfort Reef in Key Largo National Marine Sanctuary in 1987. This particular proposal is clearly inconsistent with the national marine sanctuary program's goals. It would require the destruction of sanctuary resources and would impair the enjoyment of the sanctuary's natural attributes for visitors who dive or snorkel. While the construction of a hotel might be considered else-

where, such an edifice is clearly inappropriate in a protected area, whose coral reefs are already exposed to considerable human visitation. Granting permission for such an activity in the Key Largo National Marine Sanctuary would be an abuse of NOAA's discretion. And we might add, it would fly in the face of concerns for the reefs in the Florida Keys that we heard earlier.

A reading of the National Park Service's policy statements on concessions within national parks is revealing in this particular case. In my judgment, National Park Service concession policy would not allow the construction of such a facility within park boundaries. First, the Concessions Policy Act of 1965 (16 U.S.C. et seq.) states:

It is the policy of the Congress that such development shall be limited to those that are necessary and appropriate for public use and enjoyment of the national park area in which they are located and that are consistent to the highest practicable degree with the preservation and conservation of the areas.

An underwater lodge at Carysfort Reef, particularly one promising overnight guests stereo music, a VCR and telephone for diversion as well as a dinner of hearts of palm salad, broccoli with Hollandaise, and lobster, for \$250 a night hardly meets this policy statement (see Attachment 2). One might as well consider building a revolving restaurant on Half Dome in Yosemite.

Elsewhere the National Park Service's policy manual for concessions makes it clear that overnight accommodations should be allowed only if they are necessary for enjoyment of the park. In any event, the policy does not allow structures or facilities in wilderness areas. This latter provision is directed at maintaining the wilderness character of an area. We suggest that one aspect of the wilderness experience is the dominance of the physical environment. If you have ever scuba dived, as thousands do each year in the Key Largo sanctuary, you know that the physical environment dominates at 30 feet. An underwater lodge would only detract from this experience.

The National Park Service policy also calls for placing facilities outside of park areas if feasible. Certainly, the proposed underwater lodge can be placed outside sanctuary boundaries. The proponents of the lodge in the Key Largo sanctuary already operate an underwater lodge in a nearby cove.

We have dwelled upon the proposed underwater lodge at Key Largo because it conflicts so clearly with the purposes of the national marine sanctuary program. In the 1984 amendments to Title III, Congress reaffirmed that the primary goal of this program is the protection of resources in nationally significant marine areas. Commercial and other uses of sanctuary resources are to be allowed only if they are compatible with the purposes for which the sanctuary was designated.

DAMAGES TO SANCTUARY RESOURCES

We compliment Chairman Studds on introducing H.R. 3640, which would clarify the authority of the sanctuary program to seek civil penalties

for damage to sanctuary resources and would direct this funding to the restoration of damaged areas and other purposes that will contribute to the sanctuary program's activities. Both objectives of this bill are important and necessary improvements upon Title III.

Considering the number of groundings of commercial and recreational vessels on reefs in the Florida sanctuaries and the sinking of commercial vessels and resulting release of polluting substances in the two California sanctuaries, damages to sanctuary resources will be a regular matter resulting from carelessness. Emphasizing that NOAA has authority to collect penalties for damages to sanctuary resources resulting from negligence will help to deter such accidents.

It is equally important to insure that funds received for damages be devoted to restoring damaged resources to the greatest extent possible and to other associated sanctuary activities. Without amendment to Title III, however, such damage awards or settlements will go into the general Treasury. For instance, all of the more than six million dollars in damages agreed to by the owners of the 400-foot M/V Wellwood, which ran aground on Molasses Reef in the Key Largo sanctuary in August 1984, will go into general revenues. Reason and fairness dictate that, at the very least, the sanctuary program should be reimbursed for the \$500,000 it had to spend from its operating budget for emergency measures taken to reduce the damage, studies to assess the damage, and initial efforts to restore some of the damaged reef structures.

As you know, Congressman Robert Lagomarsino has introduced H.R. 3772. We recommend that several provisions in Title IV of that bill be considered in refining H.R. 3640. First, we suggest adding the language in Section 308(a)(1)(C), which includes in the definition of "damages" compensation for "the cost of emergency resource measures", which are defined as any action "taken by the Secretary in response to an incident threatening imminent destruction of or injury to any sanctuary resource; and necessary to minimize such destruction or injury."

In this connection, we also support Congressman Lagomarsino's proposal to allocate 20 percent of damages received, up to \$750,000, to a National Marine Sanctuary Program Emergency Response and Damage Assessment Fund. As it is now, costs for emergency measures must be paid out of the already meager operating budget of the national marine sanctuary program. Even one moderate accident can mean the difference between having staff to review proposed sanctuaries or research projects that can contribute to marine resource conservation generally. Having a pool of funding for emergencies will eliminate this problem.

PROMOTING GROWTH OF THE NATIONAL MARINE SANCTUARY PROGRAM

We and other witnesses have expressed concern about the slow pace of sanctuary designation as well as the attrition in management, research, and education activities at existing sanctuaries.

There are several possible reasons for the lack of progress in securing the benefits of this program. One theory is that the 1984 amendments to Title III unnecessarily complicated the designation process. We do not believe this theory is tenable, however. First, the

1984 amendments were largely a codification of NOAA's administration of the sanctuary program after development of the Program Development Plan in 1982.

Also, the delays in the Flower Garden and Cordell Bank proposals began before the amendments were signed by President Reagan on October 19, 1984. Indeed, NOAA did not propose implementing regulations until June 12, 1986 (51 Fed. Reg. 21369-21378). These regulations have yet to be issued in final form. We urge Congress to direct NOAA to reopen the comment period on these proposed regulations, so that the record can reflect experience gained since the comment period closed on 11 August 1986.

We suggest that the delays and attrition in the program are largely due to a lack of funding and lack of a timetable for carrying out the review of potential sanctuary sites. As we understand it, the review of most sites should take about three years of full time work by one person. The cost for this person's time, necessary research, travel, publications, and hearing expenses amounts to about \$150,000 per year or \$450,000 total.

We don't see that kind of money in the \$2.1 million budget proposed by the administration for 1989 or in the \$2.6 million approved by Congress for 1988. Maintenance of basic operations requires \$1.8 million. Add to that seven sanctuaries at \$250,000 annually, on average, and you have spent the budget at least once without reviewing a single new site. We don't believe that Congress or our members intend such an outcome even in these parsimonious times. We can be assured, however, that a lack of funding logically leads to a lack of sanctuaries.

As it is now, however, the ramifications of particular funding levels are difficult to determine since information about the program's needs is difficult to come by. The administration certainly has made no effort to provide a realistic assessment: even as they have requested less money they have promised more sanctuaries. And we have simply ended up with less money and no new sanctuaries.

We wish to suggest one means of addressing these problems. NOAA should be required to provide the authorizing and appropriating committees of Congress with detailed information on adequate levels of funding for basic operations including program-wide research and education, and for the full operation of currently designated sanctuaries.

As we noted above, the program needs a base budget of \$1.8 million for operating expenses and needs another \$2.0 million for operation of the seven existing sanctuaries and the Cordell Bank sanctuary, which the administration assures us once again will be designated this fiscal year. We further understand that it costs approximately \$150,000 per year to review a site over a three-year period. If the program is to designate one site per year and the review process takes three years, it must be considering three sites at any one time, each site being at a different stage of review. For this purpose, another \$450,000 should be authorized and appropriated. This brings the total budget to \$4.25 million for fiscal year 1989. Assuming that NOAA designates one site each year for the foreseeable future, an additional \$250,000 should be authorized for

1990 and beyond.

With this general background, we wish to suggest the following amendment to H.R. 4208. Authorization levels should be set for each of three activities in each year. These activities are general management and operations, management of existing sanctuaries, consideration of sanctuary candidates. We suggest rewriting the authorization levels as follows.

	1989	1990 (In millions)	1991	1992
General management and operations	\$1.8	\$1.8	\$1.9	\$1.9
Management of existing sanctuaries	\$2.0	\$2.25	\$2.5	\$2.75
Consideration of sanctuary candidates	<u>\$0.45</u>	<u>\$0.45</u>	<u>\$0.5</u>	<u>\$0.5</u>
	\$4.25	\$4.5	\$4.9	\$5.15

Together with the information provided by NOAA, this itemization of the authorization levels will allow a clearer evaluation of the impact of any particular funding level upon the growth of the program. It will be clear whether or not the executive branch has submitted a budget request that provides for growth and consolidation of the program and whether Congress has provided adequate funding. If the total amounts shown above are provided, funding will be sufficient to designate and manage one new site for each of the next four years.

It is equally important to insure that the sanctuary program is properly staffed. Currently, NOAA has not allocated sufficient positions to the sanctuary program to allow timely review of active candidates or to hire onsite managers. To this end, we recommend that Congress direct NOAA to allocate two new positions for consideration of active candidates and two new positions for management of existing sanctuaries. With the designation of a sanctuary, another position should be assigned for onsite management of the sanctuary.

Together with budget and staffing information, NOAA should provide Congress with an annual progress report on active candidates and a plan for considering new sites in later years.

The last seven years have shown that Congress cannot simply leave the designation of sanctuaries to the executive branch. For this reason, we also urge that Congress establish a timetable for consideration of sites. Assuming that the necessary funding is provided, the administration should be considering the designation of three sites each year and should designate one site each year. Assuming that NOAA will designate Cordell Bank soon and will move ahead with Flower Garden Banks in the Gulf of Mexico, we would like to suggest several sites that Congress identify for NOAA's active consideration in the next four years.

SANCTUARY PROPOSALS THAT SHOULD BE ADVANCED

In the last year, CEE completed a preliminary review of potential sanctuary sites in the Eastern Pacific. In this first year of a three-year project, we reviewed available literature and spoke with state and local officials, scientists and citizens' groups. This review has confirmed that this region enjoys an extraordinary diversity of marine habitats.

Our review is not complete and we must talk with more interested people. But we have found several sites that we believe NOAA should proceed with in the next two years. These are Monterey Bay off California, Washington Outer Coast, the northern Puget Sound area in Washington, and areas off Massachusetts.

Let me give you some background on these sites and we think that you will agree that they are the kind of world class areas that would reflect very favorably on the sanctuary program.

Monterey Bay

Monterey Bay includes the largest submarine canyon on the west coast. The unusual nearshore depths of this site attract many pelagic animals, such as blue and sperm whales, relatively close to shore. The marine flora, including extensive kelp beds, has been described as the richest on the west coast. Monterey Bay also provides habitat for many species of commercial and sport fishes, the threatened sea otter, sea lions, seals and seabirds. Many species of whales and dolphins migrate through the site.

Monterey Bay is used quite extensively for diving, sport fishing, natural history tours, swimming, surfing and sailing. Commercial fishing is very important and in 1986 landings had a wholesale value of \$8.9 million. Research opportunities abound in the Bay due to the proximity of the canyon to the shore and of several universities and marine labs, which utilize Monterey Bay for marine biology and oceanographic study.

The presence of the Monterey Bay Aquarium, which is visited by 1.6 million people annually, the Elkhorn Slough National Estuarine Research Reserve, and several state parks attests to the importance of Monterey Bay. A sanctuary in this area can contribute greatly to providing a regional focus for educational programs.

Adding urgency to the need for protection of Monterey Bay are plans by local towns for new sewage outfalls as well as continuing problems with pesticide and toxic waste contamination. Oil development is not presently planned for the immediate area, but is regularly proposed. Monterey Bay is a California state oil and gas sanctuary and therefore there is no immediate threat of oil or gas development in state waters.

Attachment 3 is a map of the study area. Attachment 4 outlines the characteristics of this area that qualify it for designation as a national marine sanctuary. Attachment 5 is the table of contents of our report on the resources and human activities in this area.

The Monterey Bay site was initially nominated in 1977 by the California Coastal Commission, along with nine other marine sites off-shore from California. After public workshops were held on all ten sites, NOAA decided to consider three of the sites further: Monterey Bay, Channel Islands, and Gulf of the Farallones. Issue papers on the three sites were released, hearings held, and in 1978, the three sites were elevated to active candidate status. The Channel Islands and Gulf of the Farallones sites were both eventually designated as sanctuaries. During the time NOAA was working on the two already designated California sites they decided to delay review of the Monterey site due to work overload.

On December 20, 1983, NOAA announced that after reassessing the rationale for the Monterey site it had decided to remove the site from the list of active candidates. (48 Fed. Reg. 56252). The program guidelines are written such that once a site is dropped from active candidacy it cannot be reconsidered (15 C.F.R. 922.22[a]).

NOAA listed three reasons for the removal of the Monterey site from the list of active candidates:

1. The existence of two other national marine sanctuaries in California that protect similar marine resources and the program's policy, established in 1980, to consider a diverse array of sites and resources;
2. the proposed area's relatively large size and the surveillance and enforcement burdens this would impose on NOAA;
3. the wealth of existing marine conservation programs already in place in the sanctuary area. (48 Fed. Reg. 56252)

In a letter to NOAA the day after Monterey Bay was dropped from the list of active candidates, CEE repudiated all three of NOAA's reasons.

In response to NOAA's first statement that there are already two similar sites protecting similar resources, we noted that this excuse ignores the uniqueness of the Monterey site. CEE pointed out that no current sanctuary in the system protects a submarine canyon and that the largest canyon located on the west coast is found on the Monterey site. The Monterey Bay site serves as a feeding ground for the world's entire ashy storm petrel population as well as numerous other seabirds. The site has the largest diversity of algal species in North America and provides a unique opportunity for research on the interactions between bay, estuarine and canyon ecosystems. CEE also emphasized that no existing sanctuary includes as many threatened sea otters. We would add that NOAA's reasoning is contradicted by its behavior on Cordell Bank, a site that NOAA is about to designate but that is arguably an extension of the Gulf of the Farallones sanctuary.

In regard to NOAA's concern that the site's size and necessary enforcement would be burdensome, CEE pointed out that the size of the sanctuary had not yet been determined and thus, any claims of a burden were speculative. CEE also stated that NOAA never indicated during Congressional reauthorization hearings that the budget for the program

was inadequate for supporting another sanctuary.

CEE acknowledged that NOAA was correct in asserting that there were already several marine conservation programs in existence in the Monterey Bay, NOAA's third reason. The adequacy of these existing programs in protecting the resources of all of the Bay is not certain. In fact, as we argued, the designation of the Monterey Bay as a national marine sanctuary would most likely improve coordination of existing programs—one of the program's goals. The existence of current programs is indicative of the value of the area.

As you may recall, NOAA conducted a review of possible sanctuary sites in 1982 and 1983. NOAA convened groups of scientists in each of eight regions to evaluate and recommend promising sites. After review and public comment, NOAA was to place appropriate sites on its Site Evaluation List (SEL). The Eastern Pacific regional resource evaluation team was instructed by NOAA not to evaluate the Monterey Bay site since it was already under NOAA review as an active candidate. Discussions with some of the scientists on the team indicate that had they considered Monterey Bay, the team would have ranked it extremely high based on NOAA's criteria (see Attachment 6).

The removal of the Monterey Bay site was a gross misapplication of the NOAA sanctuary regulations. NOAA's current policy might well preclude reconsideration of Monterey Bay. We urge that Congress direct NOAA to renew consideration of Monterey Bay as an active candidate.

Outer Coast of Washington and the Northern Puget Sound

We turn now to Washington state. Two sites on the SEL are especially worthy of active consideration. Both of them would make unique contributions to the sanctuary program, since this transitional region which lies north of 47 degrees north latitude, includes a rich diversity of habitats and species characteristic of northern temperate and subarctic waters. The lack of any sites being actively considered for sanctuary designation north of Cordell Bank (38 degrees north) is a major shortcoming in the national representation of the marine sanctuaries program.

The Washington State sites include the productive nearshore waters surrounding the San Juan Islands and the pristine coastal waters along the Olympic Peninsula. Both these proposed sanctuaries received strong local support from the Sport Fishing Institute, the Makah Tribal Council, the University of Washington, as well as from the conservation community. Preserving the quality of these waters for research, recreation, and commercial fishing is important to the economy of Washington state. Both sanctuaries can be effectively established with minimal expense due to the presence of existing public education facilities and to the fact that long term field studies are being conducted, which already provide a historical record of the resources in the area. The results of these studies can be used to develop integrated monitoring programs to aid management.

The coastal area along the Olympic National Park is one of the least developed shores in North America (Attachment 7). This area hosts all 16 species of marine birds known to breed in Washington State which amounts

to over half of the State's population of 308,000 breeding birds. This area is also very important to endangered bird species, with 66 bald eagles and 10 peregrine falcons known to breed in the study area. The Washington Department of Wildlife has been censusing the bird, seal, and sea lion populations which utilize the numerous offshore rocks of the National Wildlife Refuge since 1978. Recent findings demonstrate that Naval bombing practise on these islands can cause significant disturbance to breeding sea bird and mammal populations. These activities should be carefully monitored, especially since they are expected to increase with the arrival of the Naval fleet in Everett Harbor.

The coastal rocks, which are co-managed as a National Wildlife Refuge within Olympic National Park, are important to numerous other species. They provide haulout areas for approximately 20 percent of the State's harbor seal population and for northern and California sea lions. Field studies have also been conducted for the past two decades by the University of Washington on the abundant intertidal invertebrate communities and on the ocean circulation of the region. These waters serve as a prime feeding habitat and migratory corridor for marine mammals, including sea otters and endangered gray, humpback and blue whales. Commercially exploited fishes, especially salmon and halibut, also depend upon the pristine habitats in this area to feed and spawn.

There is an excellent opportunity to integrate sanctuary research, education, and management activities with similar activities focused on adjacent terrestrial environments conducted by a number of agencies, including the National Park Service. The importance of the biological resources in Olympic National Park has been recognized in its designation as a Biosphere Reserve and World Heritage Site. The park also serves an important educational function by hosting more than 3.5 million visitors each year. There are also important archaeological and historical sites along the coast, especially within the Makah, Quileute, Hoh, Queets and Quinault Reservations.

The boundaries of the sanctuary study area provide a three-mile buffer zone around the offshore islands to reduce impacts from offshore drilling operations without unduly increasing the size of the protected area (450 square miles). Lease sale #132 has been rated by the Minerals Management Service to have the lowest probability of producing economically retrievable hydrocarbons (0.2) and is rated to be among the most biologically productive and environmentally vulnerable sites in the entire Pacific region. Governor Gardner has proposed that all waters north of 47 degrees be deferred from this sale, which includes all the waters in the proposed sanctuary.

The northern Puget Sound proposal includes the exceptionally productive waters of Juan de Fuca Strait and those surrounding the San Juan Islands in Northern Puget Sound (Attachment 8). This nearshore region supports a great diversity of species because of the varied habitats and strong tidal mixing of nutrient-rich estuarine waters through the narrow, glacially carved channels between the islands. This area provides shelter to breeding birds and mammals while retaining proximity to oceanic prey resources. It has long been recognized as one of the most important wintering areas for birds of the Pacific Flyway with 116 species known to occur during the year. The study area also supports 58

bald eagle nests and a winter population of 250 eagles which represents the largest concentration in the contiguous United States.

The existence of numerous long term field programs is testament to the region's biological richness. The sheltered inshore waters make an ideal setting for long term field studies which can be conducted on small vessels throughout the year. The University of Washington's Friday Harbor Marine Laboratory has been studying the marine biology of the area since 1903. The longest field studies on killer whales and minke whales have been conducted since 1976 through the Whale Museum in Friday Harbor. Our current understanding of the natural history of these two otherwise elusive species is derived primarily from these two model populations.

The designation of a sanctuary in this area would foster coordination and focus the activities of a variety of existing programs in the area. The National Estuarine Research Reserve at Padilla Bay provides an ideal opportunity to combine the research and education responsibilities of the two programs for the development of comprehensive management. The islands are uniquely situated in a productive ecosystem that is surrounded by the rapidly growing population centers of Vancouver and Victoria, Canada and Seattle and Bellingham, Washington. The accessibility of the islands is a mixed blessing, for although it provides for excellent educational opportunities, it also poses some management concerns.

Specific concerns that may be addressed by the sanctuary include a public education program aimed at drawing attention to the disturbance caused to bird colonies and seal rookeries when boats approach the Wildlife Refuges too closely, informing people not to pick up seal pups which appear to be abandoned, when in fact their mothers are off foraging, posting whale watching regulations at every harbor and increasing the enforcement procedures for whale harassment.

In addition, there is the ever present threat of oil being spilled from the numerous tankers and barges which traverse the study area daily. During 1987 there were 63,847 vessel movements through the study area, excluding ferries, reported on the Seattle Vessel Traffic System. There were 2,432 tanker movements and 28,579 tug with tow movements, which accounted for 3.8 percent and 44.8 percent respectively of the year's traffic.

In the past two months there were two serious oil spills, which added another 75,000 gallons into this productive, but sensitive system. According to the Coast Guard's report on polluting incidents in and around United States waters during 1983-1984, there were 854 incidents of spills in Washington State waters in 1983 and 1984 which released 10,527,787 gallons of oil and hazardous substances and another 142 incidents which released 8,752 pounds of dry hazardous materials. We should be sure that only the safest vessels carry hazardous substances through the spectacular waters of Northern Puget Sound if we hope to retain the biological richness that makes this area a national treasure.

As we have already mentioned, we believe these sites should be actively considered for sanctuary designation. We will soon be circulating reports on the two Washington sites prepared by Fred Felleman, CEE's Marine Sanctuaries Research Coordinator. These reports

will document in greater detail the outstanding qualities of these sites. For the time being, we have attached outlines that summarize the qualities of these sites that make them deserving of sanctuary designation (Attachments 9 and 10).

An International Sanctuary Proposal

We also wish to bring to your attention two sites that are of international interest. These sites are off Massachusetts: Stellwagen Bank, and Nantucket Sound and Shoals. These areas attract attention particularly because they are important summer feeding areas for whales.

The significance of these sites is not just regional or national, but international. Especially important in this respect are the endangered humpback whales that feed off Massachusetts in the summer and breed and calve on Silver Bank north of the Dominican Republic in the winter. It is on Silver Bank that the world's largest breeding population of endangered humpbacks gathers each winter.

These animals have been studied for more than a decade by U.S. scientists. With generous assistance from the Tinker Foundation and other donors, CEE has encouraged research by Dominican scientists and collaboration between the two groups of scientists. In these efforts, we have received valuable assistance from staff of the U.S. marine sanctuary program and other federal agencies as well as the Center for Coastal Studies in Provincetown, Massachusetts.

For nearly as long as U.S. scientists have been studying the humpbacks on Silver Bank, they have urged the Dominican Republic to declare Silver Bank a sanctuary. In 1986, the U.S. Congress passed a resolution (H.J. Res. 136) proposed by former Congressman William Whitehurst calling for such an action. These efforts, together with our own and those of Dominican conservationists, contributed to the designation of the Silver Bank Humpback Whale Sanctuary by President Joaquin Balaguer on October 14, 1986. (See Attachments 11 and 12).

Designation of a complementary humpback sanctuary off New England would be a fitting means of promoting international cooperation in the conservation of an endangered migratory marine species.

We urge Congress to direct NOAA to elevate all of these sites to active candidate status and to have designated all of them by 1992.

OTHER MATTERS

The coalition organizations also ask that you consider clarifying NOAA's authority to accept gifts of goods and services from the private sector. The lack of clear authority to do so has hampered efforts to provide community support for research, management, and education activities in existing sanctuaries. Other agencies in the federal government, including the U.S. Fish and Wildlife Service and the National Park Service, possess such authority. Having met with community leaders near several existing sanctuaries, we know that there is a significant potential to augment federal support for this program from community benefactors.

I now turn to an issue that was raised in the 1983 hearings on Title III. The very term "marine sanctuary" has often generated considerable concern and confusion. The American Heritage Dictionary defines sanctuary as "a reserved area in which animals or birds are protected from hunting or other molestation." This meaning of the word has led fishermen, for instance, to believe that a "marine sanctuary" will always prohibit fishing of any kind. As a matter of fact, commercial fishing is generally allowed in national marine sanctuaries.

In addition to this unnecessary confusion, the word sanctuary fails to capture the notion that this program is directed at the conservation of ecosystems, not simply the individual species of plants and animals in the ecosystem. All in all, the term "marine sanctuary" has little to recommend it except that that is how we have always referred to these special areas.

When the matter was last discussed before these subcommittees, I opposed changing the name. I no longer hold that view and urge that Congress change the name of this program to the National Marine Reserve Program. Besides eliminating the confusion caused by the word sanctuary, this change will complement the recent change of the National Estuarine Sanctuary Program, established under the Coastal Zone Management Act, to the National Estuarine Research Reserve Program.

Both industry and the non-profit community have demonstrated a readiness to assist the government in achieving the goals of this important program, but we await a clear demonstration of commitment by the federal government. In the coming weeks, the coalition organizations are pledged to working with you to fashion a renewed commitment to the National Marine Sanctuary Program.

Thank you for considering our views.

21. OCEAN CONSERVATIONATTACHMENT 1

The Brundtland Commission's report highlights the serious threats which confront marine areas around the world. However, conservation efforts for the marine environment have lagged far behind those for the terrestrial environment, and an integrated approach to the management of the marine ecosystem is yet to be implemented. As a result, many marine areas now face serious problems; including:

- * Stress from pollution
- * Degradation and depletion of resources, including species
- * Conflicting uses of resources
- * Damage and destruction of habitat

Even though by 1985 some 69 nations had designated 430 marine protected areas, lack of technical, human, and financial resources limit the effective management of many of these protected areas. This seminar recognizes that Marine Protected Areas represent but one component of a broader framework of integrated marine ecosystem management of renewable and non-renewable resources. Further, wilderness as a concept is applicable to the marine environment and represents one of the most highly protected categories of protected areas.

The 4th World Wilderness Congress calls upon national governments, international agencies and the non-governmental community to:

1. Implement integrated management strategies to achieve the objectives of the World Conservation Strategy and in so doing to consider local resource needs as well as national and international conservation and development responsibilities in the protection of the marine environment.
2. Involve local people, non-governmental organizations, related industries and other interested parties in the development of these strategies and in the implementation of various marine conservation programmes.

The 4th World Wilderness Congress recommends to FAO, IMO, IUCN, IWC, the North Sea Ministers' Conference, UNEP, UNESCO, other international organizations and all nations:

1. Adoption of the following primary goal: "To provide for the protection, restoration, wise use, understanding and enjoyment of the marine heritage of the world in perpetuity through the creation of a global, representative system of marine protected areas and through the management of human activities that use or affect the marine environment, consistent with the objectives of the World Conservation Strategy."
2. That as an integral component of marine conservation and management, each nation seek cooperative action between the public and all levels of government for development of a national system of marine protected areas. The term marine protected area is defined as: "Any area of intertidal or subtidal terrain, together with its overlying waters and associated flora, fauna, historical and cultural features, which has been reserved by legislation to protect part or all of the enclosed environment". Marine wilderness is defined, for the interim, as: "Marine areas where little or no persistent evidence of human intrusion is present or permitted, so that natural processes will take place unaffected by human intervention".*

3. That such a system should have the following objectives:
 - a. to protect and manage substantial examples of marine and estuarine systems to ensure their long-term viability and to maintain genetic diversity;
 - b. to protect depleted, threatened or endangered species and populations and in particular to preserve habitats considered critical for the survival of such species;
 - c. to protect and manage areas of significance to the life-cycles of economically important species;
 - d. to prevent outside activities from detrimentally affecting the Marine Protected Areas;
 - e. to provide for the continued welfare of people affected by the creation of marine protected areas; to preserve, protect, and manage natural aesthetic values of marine and estuarine areas, and historical and cultural sites for present and future generations;
 - f. to facilitate the interpretation of marine and estuarine systems for the purposes of conservation, education, and tourism;
 - g. to accommodate within appropriate management regimes a broad spectrum of human activities compatible with the primary goal in marine and estuarine settings;
 - h. to provide for research and training, and for monitoring the environmental effects of human activities, including the direct and indirect effects of development and adjacent land-use practices.
4. That the development by a nation of such a system will be aided by:
 - a. agreement on a marine and estuarine classification system, including identified bio-geographic areas;
 - b. review of existing protected areas, to establish the level of representation of classification categories within those areas;
 and will require:
 - i. determination of existing and planned levels of use of the marine and estuarine environment and the likely effects of those uses;
 - ii. delineation of potential areas consistent with the objectives listed above and determination of priorities for establishment and management;
 - iii. development and implementation of extensive community education programmes aimed at specific groups, to stimulate the necessary community support and awareness and to achieve substantial self-regulation; and
 - iv. allocation of sufficient resources for the development and implementation of management plans, for regulatory statutory review processes, interpretation, education, training, volunteer programmes, research, monitoring, surveillance and enforcement programmes.

* It is understood that participants in the seminar will attempt to move toward a single definition of Wilderness applicable to the biosphere, keeping in mind the definition of terrestrial wilderness adopted in Resolution 33.

Sponsor:

Ocean Wilderness Seminar

Follow-up: on next page.

Follow-up:

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Living Underwater: An Adventure For Divers

Editor's Note: This is the next installment in a series of stories that profile diving adventures. For more information, addresses, and telephone numbers see the story at right, below. In next month's issue *Underwater USA* will conclude its adventure diving examination.

By Tim Pelton

By now the local diving hole is getting pretty routine. The same old vacation spot has lost that you know on a first name basis. And all of those tropical dive locations are turning into a blur of exotic blue water and palm trees.

What you need is some adventure.

How about a step into the future of underwater recreation? Would you like the opportunity to live beneath the sea?

Captain Nemo did it. Fish do it. Now you can too. Jules Undersea Lodge is a perfect addition to a Florida Keys dive vacation if you are interested in living underwater.

Enter your own inner-space-age home under the waves. A short dive from the surface brings you through the mysterious waters of Bora Bora lagoon in Key Largo. And there beneath you stands the hulking exterior of Jules.

You dip beneath it to see the silvery rectangle that leads to the interior. You slide to this artificial "surface" and arrive by way of the "moon pool" pulling yourself above the water and into the luxury habitat.

The lodge features a large eating/living area and two bedrooms. A soundproofed sleeping area, appointed in a modern, high-tech style.

You can eat, sleep, explore, do anything you can imagine in the comfort of your own underwater hotel room. The undersea facility is designed to use by three couples at a time with private quarters and a variety of diversions such as video, stereo music, telephone and more. The lodge is air conditioned and also features a private bath and hot showers. It is a luxury inn 30 feet beneath the surface.

The sheltered cove that houses the lodge features 30 to 60 feet of visibility in green-blue waters that offer a large variety of fish and other marine creatures. And an unlimited amount of time to encounter these residents face to face is yours because the lodge offers a "HOOKAH" system for divers so that a tethered swim replaces a dive with cumbersome tanks.

The Jules Undersea Lodge staff constantly operates and monitors all on-shore systems that provide life support. And they also provide the personal services that make the facility a vacation spot, not just an adventure. A menu is chosen in advance by all visitors and food is included in the cost of the stay. Guests must be certified divers and are required to deposit \$100. Dives should be completed for obvious reasons.

Prices can range from less than a hundred to over a thousand dollars for use depending on the length of stay and number of people involved. For instance, for a person as the price for a three-man stay (at least one day or less before the stay) is \$100. (Single bedrooms or available space ten days or less before that price are cheaper.) The average per person cost, double occupancy, of a one-day stay is \$200. For a group of six the price drops to \$130 for each. And for a group of four or fewer the entire lodge can be rented for a day for \$1,000. For more information or rates contact Jules representatives at the address or phone numbers in the listing on this page.

But maybe your tastes in underwater living are more Spartan and goal-oriented. While a day underwater in Jules Undersea Lodge will give you true aquanaut status maybe you are looking for more formal underwater training. And maybe you would like to live the way Textile and Sealab aquanauts did in a less luxurious, more utilitarian environment.

If so the Marine Resources Development Foundation has just the underwater habitat for you. Not far from Jules lies the cylindrical habitat where divers continue their underwater education and can receive NAUI or

PADI specialty certification as aquanauts.

Like Jules this habitat features a HOOKAH system so that divers need not worry about wearing cumbersome tanks while underwater. The Marine Resources training sessions last two days and the smaller habitat has a special underwater observation sphere made of clear polycarbonate material that allows a visitor to see 360 degrees from a dry vantage point.

Training includes a familiarization on how the underwater habitat system works, lectures to explain the concepts behind the technology, and much more. The two-day course costs \$350 dollars per participant and those involved must have an advanced open water certification.

Also the Foundation uses the habitat as part of a summer camp program for young adults, ages 15 to 19, to experience the ocean close-up for three weeks in that program a dolphin encounter, mini sub operation, conventional seamanship, marine ecology, and much more are offered. (For contact information check the listing on this page.)



Luxury At Depth — Jules Undersea Lodge features high-tech accessories and a permanent view on the underwater world. Visitors can spend unlimited time exploring the waters of the surrounding lagoon in Florida's Key Largo.

For Those Who Dare To Take Up The Challenge More Information About Adventure Dive Travel

Readers seeking more details about the adventure dive travel market should contact the following organizations for information:

- **Hooked Muse** — Boone Terre Mine, Div. West End Diving, 651 East Oak, Boone Terre, MO 64608, (314) 751-5005
- **Science and Archeology Expeditions** — CEDAM, Fox Road, Croton-on-Hudson, NY 10520
- **Dive Medicine Research** — Divers Alert Network (DAN), P.O. Box 3023, F.G. Hall Laboratory, Duke University Medical Center, Durham, NC 27710, (919) 684-2948
- **Science And Archeology Expeditions** — Earthwatch Expeditions, Inc., 680 Mount Auburn St., P.O. Box 403, Watertown, MA 02272, (617) 926-8200
- **Underwater Habitat** — Jules Habitat, Inc., P.O. Box 3330, Key Largo, FL 33037, (305) 451-2352
- **Desert Trek And Diving** — IDE, 6340 Wilshire Blvd., Suite 1715, Los Angeles, CA 90048, (213) 455-4225
- **Brass Helmet Diving** — Lakeland Divers, 92 Route 10, East Hanover, NJ 07936, (201) 937-0194
- **Great White Shark Encounter** — La Mer Diving School, Inc., 823 United Nations Plaza,

Suite 810, New York, NY 10017, (212) 599-0666

□ **Sea & Sea Travel, Inc.** 50 Francisco St., Suite 207, San Francisco, CA 94133, (415) 324-2400

□ **Underwater Habitat** — Marine Resources Development Foundation, 51 Shoreland Dr., P.O. Box 787, Key Largo, FL 33037, (305) 451-1139 (in Florida 800-827-1139)

□ **Alaskan Fjord Whale Encounter** — Oceans Oceanic Society Expeditions, Fort Mason Center, Building E, San Francisco, CA 94123, (415) 441-1106

□ **Coastal Expedition** — P.O.S. Coastal Society, 930 West 21st St., Norfolk, VA 23517, (804) 627-1144

□ **Deep Research Sub Dive** — Research Submersibles, Ltd., P.O. Box 1715, Grand Cayman, B.W.I. (809) 949-3870, 949-8296

□ **Marine Science Expeditions** — Scripps Institution of Oceanography, University of California, La Jolla, CA 92093, (619) 432-3624

□ **Alacha Treasure Dive** — Sea Hunt, Inc., P.O. Box 250, Key West, FL 33641, (305) 294-8125

□ **Polar Dive Expedition** — UNENSO, P.O. Box 52420, Freeport, Grand Bahama Island, Bahamas, 809 373-1244

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Dear Editor,

momentarily sharing this underworld fantasy with

And it almost seems as though the old life is being lived again, except we're not in the same place, resident in making friendships with large rather strangely made beings. Even the lobster, as much, being more an old train seemed to be interested in us and would allow us to get very close before exhibiting withdrawal from our attentiveness.

We explored car wrecks, boat wrecks, and the outside of our lodge from top to bottom. We explored the more sensation of swimming in the lake. We explored the

We then surfaced into the lidge and explored the fun of a fantasy that most sport divers have had at one time or another — staying down or “camping out” at depth. Only this camping was like the most luxurious of camping — dinner of hearts of palm salad, broccoli with Hollandaise, and lobster (no, no, not the guys we befriended); movie on VCR, a luxurious decor, a telephone (I called my mom from 30’ underwater!), and the fun of surface to ground communications with the great crew of Jules. We almost feel like we really were part of a research team, the crew is so supportive and friendly. For all you enthusiasts out there who have not yet learned how to enjoy all types of sport diving — a whole new advice. As my informant, conditions definitely are not as harsh as you might think and a feeling is not safe enough due to weather, buoyancy, but I truly believe and experienced that this is a phenomenal murky lagoon has wonders to be discovered if you can learn to open your mind and explore the possibilities.

When you awaken the next day "Trigger" (guess what type of fish he is) will brightly surface in the entry port and demand breakfast. What you will hand feed him. He will probably bring a whole group of friends with him so make sure you prepare plenty. Oh, and before you go to work, be sure to check out the large crab hanging from the ceiling of the bottom. One of the crew will bring it over and place it in the large cage at the entrance of the tank. The fish will be very interested in looking at the crab and will probably eat it.

[illegible]

For more information on Julie Lundgren Locket, call her at (813) 477-0889, owner of Silverado of Tampa, Inc. or Julie or Ken Lange at (800) 835-7779 from Fla. (outside Fla. call 305-461-1391).

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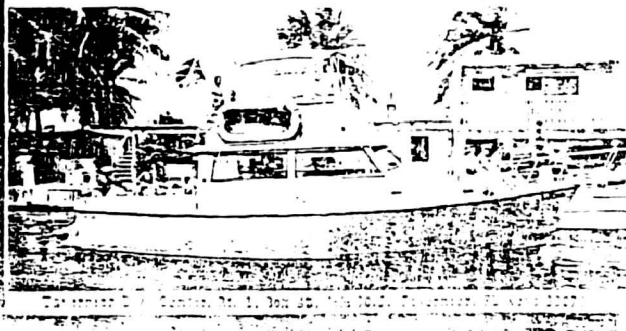
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Oops! On Lobster Winner

In the July issue of *Foreign Affairs*, New York University professor and SAC David Rosenberg, who is now a DOD Deputy Director of Human Resources Management, writes that the "Vietnam record is a record of failure. . . . The Booby Award is the only award that the DOD has ever given."

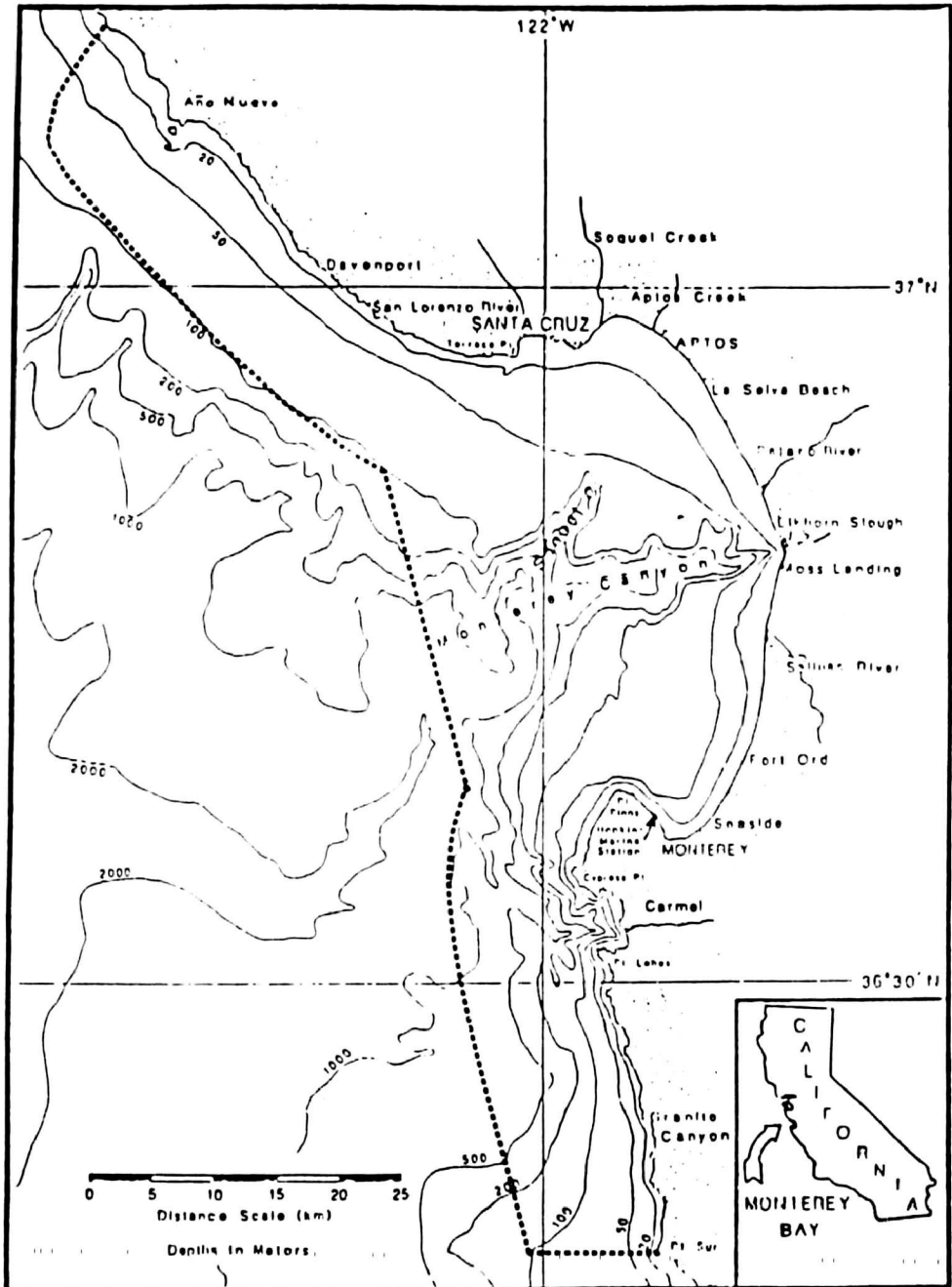


Figure 2. Map of Monterey Bay with study area boundaries.

MONTEREY BAY STUDY AREA

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APPENDIX 1. SITE IDENTIFICATION CRITERIA

Marine sanctuaries are designated on the basis of specific site identification criteria, developed by Drs. W.H. Adey, R.M. Darnell, and G.C. Ray for the National Marine Sanctuaries Program (Tarnas et al., 1987):

I. Natural Resource Values

- A. Regional Representation: North Temperate and Boreal-Austral Temperate North Pacific region: medium.
- B. Subregional Representation: Oregonian: medium
- C. Community Representation: wide variety of communities
 - 1. unique submarine canyon community: high
 - 2. nearshore sublittoral community: medium
 - 3. extremely diverse rocky intertidal community: high
 - 4. sandy beach intertidal community: medium
 - 5. extensive kelp bed community: high
- D. Biological Productivity
 - 1. canyon creates important nearshore upwelling site
 - 2. canyon-feeding birds and mammals indicate productivity
 - 3. kelp bed productivity extremely high
 - 4. rocky-intertidal productivity high
- E. Biotic Character/Species Representation
 - 1. Endangered/Threatened species
 - a) sea otter
 - b) gray whale
 - c) blue whale
 - d) fin whale
 - e) Pacific right whale
 - f) humpback whale
 - g) sperm whale
 - h) brown pelican
 - i) California least tern
 - j) ashy storm petrel
 - k) peregrine falcon
 - 2. unique species associations & biological assemblages
 - a) kelp, sea urchin, abalone, & sea otters
 - b) canyon: unique array of meso- & bathypelagic fish
- F. Species Maintenance
 - 1. contains majority of sea otter range
 - 2. site-specific feeding area for individual blue whales
 - 3. critical breeding habitat for northern elephant seals on Ano Nuevo
 - 4. contains numerous seabird breeding colonies
 - 5. important brown pelican summering area
 - 6. feeding area for entire ashy storm petrel population
 - 7. important site for rare, endemic Calif. least tern
- G. Ecosystem Structure/Habitat Features
 - 1. Monterey submarine canyon (Soquel & Carmel canyons)
 - 2. one of few major bays on Pacific coast: sandy beach habitat

3. rocky substrate for intertidal invertebrates
4. upwelling region supports productive food chain

II. Human-Use Values

- A. Fishery Resources of Recreational Importance
 1. large rockfish populations support skiff & partyboats
 2. important site for sport salmon fishery
 3. halibut fishery
 4. shark fishery
- B. Fishery Resources of Commercial Importance
 1. salmon troll fishery
 2. squid roundhaul fishery
 3. rockfish trawl fishery
 4. halibut, rockfish, and white croaker gillnet fishery
- C. Ecological/Aesthetic Resources
 1. recognized for scenic beauty of Monterey Peninsula
 2. important areas for nature observation: seabirds & mammals
 3. important skin and SCUBA diving resources
- D. Research Opportunity: facilities at Monterey Bay Aquarium, Hopkins Marine Station of Stanford University, Naval Post-Graduate School, Moss Landing Marine Laboratories of San Jose State University, Long Marine Laboratory of University of California at Santa Cruz
 1. submarine canyon research
 2. ecology research of kelp beds
 3. rocky intertidal invertebrate research
 4. sea otter behavior & ecology research
 5. marine mammal & seabird behavior & ecology research
- E. Interpretive Opportunity
 1. Numerous facilities attracts millions of visitors and could benefit from sanctuary displays (Monterey Bay Aquarium, Ano Nuevo Interpretive Center, Elkhorn Slough Estuarine Reserve Interpretive Center, Calif. Dept. of Parks and Recreation's State Beaches)
 2. Scenic beauty attracts millions of tourists each year
 3. area populations are projected to increase 40% in next 20 years
 4. easy access along California State Highway 1
- F. Historical, Cultural, or Paleontological Importance
 1. Costanoan Indian shell middens (10,000 yrs. old)

III. Potential Activity Impacts

- A. Oil spill threats from proposed oil and gas exploration
- B. Oil spill threats from oil transshipment & other tanker traffic
- C. Dredging of harbors alters sediment distribution & dredge spoil dumping may have negative impacts

- D. Sand mining may alter sand budget and increase shoreline erosion
- E. Sewage disposal may affect environmental quality
- F. Water quality threats from pesticide runoff, lead levels in Monterey Harbor, & tributyl tin leaching in boat harbors
- G. Seabird & sea otter incidental mortality could be problem from gill net fishery, but this is currently under control due to prohibition within 15 fathom deep waters.

IV. Management Concerns

- A. Relationship to Other Programs: numerous programs exist, but the sanctuary could coordinate efforts
 - 1. Ano Nuevo State Reserve
 - 2. Elkhorn Estuarine Research Reserve
 - 3. Pacific Grove Marine Gardens Fish Refuge
 - 4. Hopkins Marine Life Refuge
 - 5. Point Lobos Ecological Reserve
 - 6. California Sea Otter Game Refuge
 - 7. 16 Calif. Dept. of Parks State Beaches
- B. Management of a Conservation Unit: Monterey Bay was rejected in 1983 because of size (@ 440 sq.mi.), but other sanctuaries are larger (Channel Islands: 1252 sq.mi. & Farralons/Pt.Reyes: 948 sq.mi.).
- C. Accessibility (see "Interpretive Opportunities")
- D. Surveillance and Enforcement: coordination with existing monitoring agencies (Coast Guard, Fish & Game, Parks & Recreation) could share effort.
- E. Economic Considerations
 - 1. Management costs: NOAA estimated costs of \$250,000 in 1983. The majority of effort could be interpretive programs, shared with other agencies and Monterey Bay Aquarium. Research activities could also be shared.
 - 2. Economic loss due to restricted activities: loss of potential oil revenues.
 - 3. Economic enhancement: protection of fishery resources, increased attractiveness to tourism.

Marine Resources and Human Activities
in the Monterey Bay Area

Prepared by:
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April 1988

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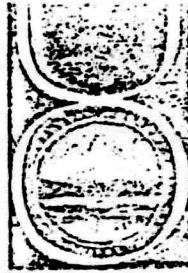
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ATTACHMENT 6



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March 1, 1984

Dr. John Byrne, Administrator
NOAA
Department of Commerce
Washington, DC 20230

Dear Dr. Byrne:

There appears to be a serious misunderstanding within NOAA on why Monterey Bay was dropped from consideration for National Marine Sanctuary Status.

An enclosed letter to the editor of the Monterey Peninsula Herald from Paul M. Wolff, Asst. Adm. NOAA, includes the following paragraph:

'We recently completed a final list of the 29 prospective sites for marine sanctuaries nationwide. This list is based upon an in-depth review by teams of scientists and was accomplished with full public participation. When we evaluated the final list, it was clear that the long-standing proposal for a Monterey Bay site could not remain on a par with a number of the new sites in areas not yet represented in the national system.'

I was team leader for the group of scientists who developed the list of potential Marine Sanctuary sites for the N.E. Pacific region. In our initial discussions of potential sites, Monterey Bay was under consideration. We were told by the consultants working under contract with NOAA, that Monterey Bay was already under consideration and that we should not consider it in our review.

It is incorrect then, for Mr. Wolff to imply that Monterey Bay was not included because of our scientific deliberations. This was not the case. We were not allowed to consider Monterey Bay on its merits and thus it was not compared in our process to the other sites selected.

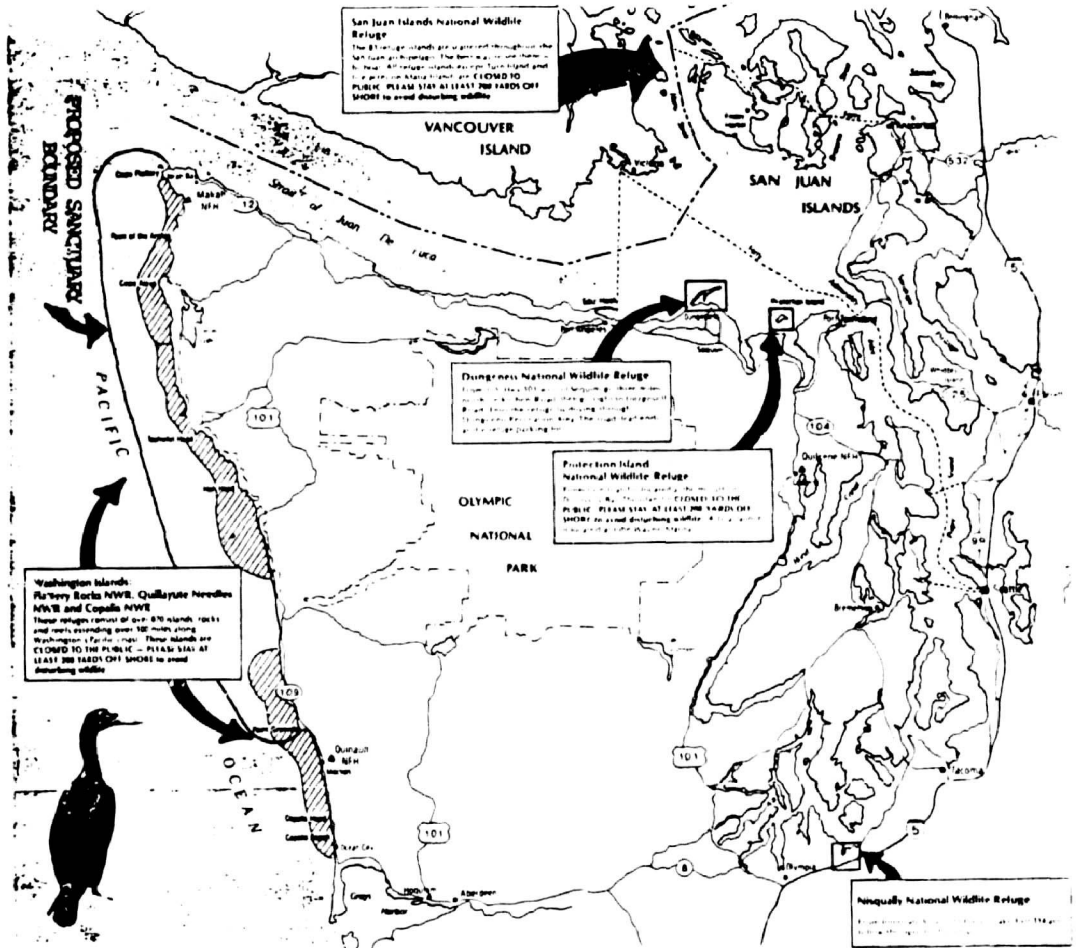
There is no doubt in my mind that Monterey Bay has some unusual features, including the submarine canyons that extend very close to the shore, that could have given this region a high ranking in our deliberations.

I hope that this letter is of some assistance as we continue the process of selecting our National Marine Sanctuaries.

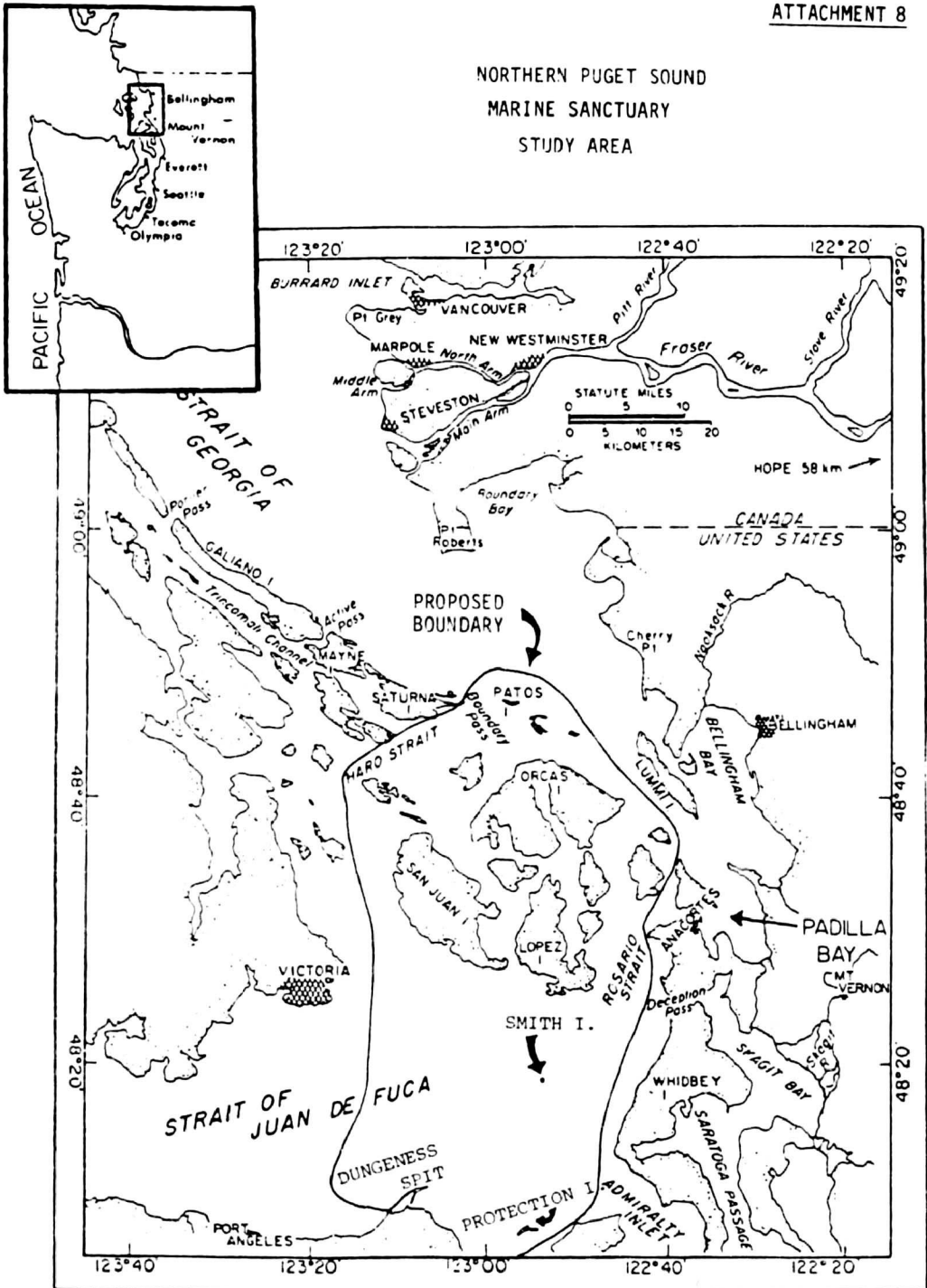
Sincerely,

Paul Rudy
N.E. Pacific Marine Sanctuary Team Leader

WESTERN WASHINGTON OUTER COASTAL MARINE SANCTUARY
STUDY AREA



NORTHERN PUGET SOUND
MARINE SANCTUARY
STUDY AREA



DRAFT EVALUATION: WASHINGTON OUTER COASTAL MARINE SANCTUARY

Prepared by

Fred Felleman
Research Coordinator
Marine Sanctuaries
Center for Environmental Education

April 1988

SITE IDENTIFICATION CRITERIA: COASTAL WASHINGTON

I. Natural Resource Values:

- A. Regional Representation: Temperate North Pacific
- B. Subregional Representation: Transitional
 - between Oregonian and Sitkan subprovinces
- C. Community Representation:
 - 1. nearshore sublittoral: abundant invertebrate and algal communities
 - 2. rocky intertidal: among the most complex in US
 - 3. Scattered sandy pocket beaches
 - 4. Extensive kelp bed community
- D. Biological Productivity:
 - 1. nutrient rich waters from extensive estuarine influences, subarctic waters from California Current, coastal upwelling enhanced by presence of submarine canyons.
 - 2. rocky coastal habitat and offshore islands support extensive intertidal communities
 - 3. kelp bed communities are highly productive
- E. Biotic Character/Species Representation:
 - 1. Diversity:
 - a) 61 species of algae
 - b) 100 species of invertebrates
 - c) 50 species of commercially important finfish
 - d) 23 species of commercially important shellfish
 - e) 87 species of marine birds occur
 - f) 11 species of marine birds breed
 - g) 30 species of marine mammals include:
 - 2 species of otters
 - 5 species of pinnipeds
 - 23 species of cetaceans
 - 2. Endangered/Threatened Species:
 - a) American peregrine falcon
 - b) California brown pelican
 - c) bald eagle
 - d) sea otter
 - e) Pacific right whale
 - f) humpback whale
 - g) sperm whale
 - h) gray whale
 - i) blue whale
 - j) fin whale
 - k) sei whale
 - l) harbor porpoise (state threatened)
 - m) green sea turtle
 - n) leatherback sea turtle
 - 3. Unique species associations
 - a) Kelp, sea urchin, abalone, and sea otter
 - b) complex associations within intertidal communities

F. Species Maintenance:

1. includes entire range of remnant sea otter population
2. coastal habitat and offshore rocks support 50 percent of State's breeding sea birds
 - 10 breeding peregrine falcons
 - 66 breeding bald eagles
3. migratory corridor and feeding grounds for cetaceans

G. Ecosystem Structure/Habitat Features:

1. high wave energy coastal site with rocky outcrops
2. narrow continental shelf incised by various submarine canyons.
3. coastal upwelling enhanced by submarine canyons
4. estuarine inputs from Columbia River, Willapa Bay, Gray's Harbor, and Puget Sound.
5. sandy pocket beaches
6. extensive kelp beds

II. Human-Use Values:

A. Fishery Resources of Recreational Importance:

1. salmon
2. trout
3. halibut
4. rockfish
5. tuna
6. dungeness crab
7. shellfish
8. sea urchins

B. Fishery Resources of Commercial and Native Importance:

1. salmon
2. halibut
3. groundfish (hake, pollock)
4. rockfish
5. shark
6. dungeness crabs
7. sea urchins

C. Ecological/Aesthetic Resources:

1. Olympic National Park renowned for scenic wilderness
2. nature cruises for whales and birds
3. diverse intertidal communities

D. Research Opportunities - Long term field studies conducted by:

1. University of Washington
 - 25 years of intertidal research on Tatoosh Island
 - 20 years of coastal oceanography
 - recently initiated sea otter prey study
 - intertidal catalogue of Neah Bay
2. Department of Wildlife
 - over ten years of marine mammal surveys
 - over ten years of marine bird surveys
 - several years of sea otter research
 - impact of Navy bombing practise on wildlife at Sea Lion Rocks.

3. Department of Fisheries
 - triennial bottom trawl survey since 1977
 - sport and commercial catch data
4. United States Fish and Wildlife Service
 - annual aerial surveys of Wildlife Refuges
5. Olympic National Park
 - Inventory and Monitoring Program
 - human impact studies on intertidal community
 - 14 rivers originate in the Park enabling studies of estuarine inputs to be conducted.
6. National Ocean Service (NOAA)
 - National Status and Trends Program samples mussels at Cape Flattery for chemical contaminants since 1984 to provide a comparative index of the pollution levels at coastal sites around the country.
7. Cascadia Research Collective
 - marine mammal surveys in Neah Bay and Strait of Juan de Fuca.
 - comparative study of regional differences in pollution ratios found in the blubber of harbor porpoise stranded along the Pacific coast.

F. Interpretive Opportunity:

1. Olympic National Park attracts 3.5 million visitors annually. Rangers are stationed along the coast for interpretive and enforcement purposes.
2. Relatively accessible by highway with extensive backpacking trails.
3. Pristine setting with low demands on development other than offshore oil and gas exploration.

G. Historical, Cultural, or Paleontological Importance:

1. There are four primary archeological sites along the coast and all are within the study area. The bulk of the information on Prehistoric Northwest Coast culture comes from the Ozette site at Cape Alava on the Makah Reservation.
2. The coastal region is renowned for its historic shipwrecks dating back to 1875.

III. Potential Activity Impacts:

- A. Naval bombing practise on the offshore islands has been demonstrated to cause disturbance of sea bird and mammal communities. These practises are likely to increase if the Naval fleet moves into Everett Harbor.
- B. Coast guard and private aircraft can also cause disturbance of wildlife in the National Wildlife Refuge.
- C. Current levels of fishing effort do not appear to have significant impacts on the marine community, but any introduction of new gear types or expanded effort will require careful review.

- D. Offshore exploration for oil, gas and mineral deposits has potentially damaging effects on cetacean migratory paths and spilled oil can have catastrophic impacts on sea bird colonies and intertidal communities.
1. lease sale #132 has the lowest probability of producing economically retrievable hydrocarbons (0.2) and is rated by MMS to be among the top sites in the entire Pacific OCS in biological productivity and environmental sensitivity.
 2. the governors of Washington and Oregon have filed a lawsuit against the Secretary of the Interior for conducting an inadequate EIS and recommends that all tracts north of 47 degrees north be deferred from leasing.
 3. the deferral recommended by governor Booth Gardner includes all waters within the proposed sanctuary.

IV. Management Concerns:

A. Relationship to Other Programs:

1. Sanctuary designation provides important non-regulatory benefits by coordinating existing research and management programs.
 - the offshore islands were set aside as a preserve in 1907, designated a National Wildlife Refuge in 1940, established as a wilderness area in 1970, and were recently incorporated within Olympic National Park. The National Park Service and Fish and Wildlife Service are the two primary agencies responsible for their management. However, neither agency has jurisdiction over the waters surrounding the islands. Research programs should be coordinated with these agencies and those organization mentioned in section IID - Research Opportunity, to promote the comprehensive management of these resources.

B. Management of a Conservation Unit:

1. The study area includes all of the significant offshore rocks used by breeding seabirds in Washington State. These islands are protected as National Wildlife Refuges, Wilderness areas, and are contained within National Park Boundaries, but there is currently no protection afforded the surrounding waters, which are under federal and state jurisdiction.
2. The proposed sanctuary boundaries provide a three mile buffer zone around the offshore islands to reduce impacts from offshore drilling activities without unduly increasing the size of the protected area (450 square miles). The Channel Islands Management Plan recommends a six mile buffer to protect invertebrates from potential oil spills.

3. Olympic National Park extends along most of the coast of the study area and has 14 rivers originating within its boundaries that eventually empty into the study area. The opportunity to cooperate with the Park's programs significantly extends the scope of the sanctuary's research and management abilities.

C. Accessibility:

1. remote, but easily accessed by highway 101 or 112
2. region well known for wilderness by visitors to Olympic National Park
3. boat harbors located at Neah Bay and La Push

D. Surveillance and Enforcement:

1. Dependent on the type of regulations to be enforced.
2. Coordination with the agencies conducting aerial surveys would provide a cost effective means of surveillance. The agencies involved in the program include the Coast Guard, the US Fish and Wildlife Service, the Washington Department of Wildlife, and the National Park Service.

E. Economic Considerations:

1. Management Costs: this site would probably require no more than the average \$250,000 needed to manage a sanctuary because of the opportunities to cooperate with existing management and education programs.
2. Economic Loss Due to Restricted Activities: would be limited to a small portion of the meager oil revenues predicted to be generated from lease #132.
3. Economic Enhancement: potentially significant increases in income to the State from protected fishery resources and tourism associated with sport fishing and nature viewing at Olympic National Park.

DRAFT EVALUATION: NORTHERN PUGET SOUND MARINE SANCTUARY

Prepared by

Fred Sallman

Research Coordinator
Marine Sanctuaries
Center for Environmental Education

April 1988

SITE IDENTIFICATION CRITERIA: NORTHERN PUGET SOUND

I. Natural Resource Values:

A. Regional Representation: Temperate North Pacific

B. Subregional Representation: Transitional
- between Oregonian and Sitkan subprovinces

C. Community Representation: High due to diverse habitats

Food Web Structure - after Simenstad et al 1979

1. Neritic - significant seasonal variations in productivity, embayments critical for spawning habitat; marine birds and mammals are predominant tertiary predators
2. Rocky Sublittoral - high productivity associated with kelp beds, combination of neritic and sublittoral food webs.
3. Rocky Littoral - macroalgae production affected by sea star and gastropod "keystone predators" - important forage for shorebird communities
4. Cobble Littoral - less diverse and complex fish assemblages, but one of the most productive areas due to the extensive beneath-rock habitat and rock benthic epifauna
5. Gravel/Cobble Shallow Sublittoral - least diverse food web, but most connected of all exposed habitats. Does not support extensive macroalgae, but physical grinding of the coarse grained beach aids detritivores
6. Sand/Eelgrass - occurs in shallow embayments which have low to moderate energy beaches, allowing sand and fine gravel to accumulate and stabilize. The beds of eelgrass ~~fasten~~ ~~fasten~~ ~~fasten~~ add to the areal stability and diversity by reducing wave and current action, trapping sediments and detritus, maintaining high dissolved oxygen levels and by providing food and refuge for juvenile demersal fishes. Also provides forage for benthic eating shorebirds and herbivorous waterfowl
7. Mud/Eelgrass - in association with saltmarsh environment, constitutes the most complex and highly connected habitat in study area. The same species are present as in the sand/eelgrass, but in greater abundances. The increase in number of benthic feeding shorebirds is particularly notable

D. Biological Productivity: High

1. This area is highly productive because strong tidal currents caused by the narrow glacially carved straits between the islands, mixes the abundant estuarine nutrients through the water column
2. The varied coastal habitats, as described above, provide resources and refuge for some of the most complex intertidal communities in the United States and one of the most important wintering and nesting habitats for sea birds of the Pacific Flyway

3. The existence of over 3,000 resident harbor seals, 81 resident killer whales, as well as various seasonally occurring marine mammals is indicative of a highly productive ecosystem.

F. Biotic Character/Species Representation:

1. Diversity:
 - a) 200 species of algae
 - b) 705 species of invertebrates
 - c) 75 species of fishes
 - d) 116 species of marine and shore birds
 - e) 15 species of marine mammals include:
 - 1 species of otter
 - 4 species of pinnipeds
 - 10 species of cetaceans
2. Endangered/Threatened Species:
 - a) American peregrine falcon
 - b) bald eagle
 - c) gray whale
 - d) humpback whale
 - e) harbor porpoise (state threatened)
3. Unique Species Associations:
 - a) complex intertidal invertebrate associations
 - b) killer whale predation on salmon and pinnipeds
 - c) river otters living in an estuarine habitat

G. Species Maintenance:

1. Highest density of active bald eagle nests in contiguous United States. There are 58 nests in the study area, but the winter population exceeds 250 eagles.
2. Approximately half of the annual run of 65 million Fraser River salmon use the study area during two critical phases of their life history.
3. One of the major habitats for marine birds on the Pacific Coast of North America. The varied habitats provide critical wintering and breeding areas for birds of the Pacific Flyway.
4. Three resident pods of killer whales, totalling 81 individuals, have been documented to regularly utilize this environment to feed and breed.
5. 23 individually identified minke whales have been documented to occur within the study since 1977.

H. Ecosystem Structure/ Habitat Features:

1. Diversity supported by a variety of sheltered, inshore habitats while retaining proximity to the ocean.
2. Estuarine inputs, predominantly from the Fraser River, are mixed through the water column by strong tidal mixing and hydraulic upwelling.
3. Kelp and sea grass communities provide refuge and spawning habitat for commercially important fishes.

II Human-Use Values:

A Fishery Resources of Recreational Importance:

1. salmon
2. trout
3. rockfish
4. dungeness crab
5. shellfish
6. sea urchins

B Fishery Resources of Commercial and Native Importance:

1. salmon
2. rockfish
3. herring
4. dungeness crab
5. shellfish
6. shrimp
7. sea urchins
8. kelp

C Ecological/Aesthetic Resources:

1. San Juan Islands renowned for scenic beauty
2. nature cruises to observe birds and whales
3. sea kayaking capital of the world
4. scuba diving

D Research Opportunities: field studies conducted by:

1. University of Washington Friday Harbor Marine Lab on San Juan Island since 1982 has studied:
 - invertebrate biology
 - regional oceanography
 - fish ecology
 - general marine biology
2. Padilla Bay National Estuarine Research Reserve, established in 1992, comprises 10,000 acres of habitat adjacent to the proposed sanctuary. contains one of the largest concentrations of eelgrass on the Pacific Coast set aside to:
 - gain a thorough understanding of ecological relationships within the estuarine environment;
 - make baseline ecological measurements;
 - serve as a natural control in order to monitor changes and assess the impacts of human stresses on the ecosystem;
 - provide a vehicle for increasing public knowledge and awareness of the complex nature of estuarine systems, their values and benefits to humans and nature, and the problems that confront them
3. The Whale Museum
 - located in Friday Harbor on San Juan Island
 - established in 1979 to educate the public on the biology of the marine mammals of the area
 - has conducted the longest field study on killer whales in the United States

- has contributed to the longest field study of minke whales
- maintains a toll free hotline to receive reports of sightings and strandings of all marine mammal species from the public year round
- maintains a visual and acoustic observation station in the Limekiln Lighthouse at Whale Watch State Park
- recently initiated studies on river otters and marine birds

4. Cascadia Research Collective

- long term studies of harbor seal abundance throughout the state.
- analysis of chemical contaminants found in the blubber of stranded marine mammals as an indicator of the health of the ecosystem.

5. Washington State Department of Wildlife

- historical surveys of marine mammals
- annual bald eagle surveys

6. United States Fish and Wildlife Service

- has management authority over the 94 Island Wildlife Refuge within the study area

7. National Park Service

- maintains two parks on San Juan Island to commemorate the conflict between the United States and Great Britain from 1950 to 1972

E. Interpretive Opportunity:

1. Rodella Bay Ecotone Research Reserve, located on the way to the San Juan Island Ferry, received 65,000 visitors in 1992. This interpretive facility provides an excellent opportunity to introduce people from the mainland and those taking the ferry to the San Juan Islands to the resources and regulations of the sanctuary.
2. San Juan Island is the primary destination of ferry visitors to the Islands, receiving 42 percent of the ferry traffic. It is also the island most geared to accommodate the visitor. Facilities which could be used to educate the public about the sanctuary include:
 - The Whale Museum
 - The Friday Harbor Marine Laboratories
 - English Camp National Park
 - American Camp National Park
 - Limekiln State Park "Whale Watch Park"
 - San Juan County Park

F. Historical, Cultural, or Paleontological Importance:

1. The historical sites at the two National Parks are under excavation by the University of Washington.
2. There are 222 archaeological sites in San Juan County as of a survey conducted in 1995. Prehistoric sites and native Indian sites comprise the majority, with Euro American influences apparent from sites 200 years old. The extent to which these sites are under water is not known at this time.

11. Potential Activity Impacts:

- A The islands are very accessible to visitors, who come by ferry, private boat, and plane to sight see, bird watch, whale watch, sail, kayak and scuba dive. The study area is subject to the growing demands of the surrounding population centers of Victoria and Vancouver, Canada and Seattle and Bellingham, Washington. Washington has the highest boat per capita of any state. This accessibility, affords excellent educational opportunities, but also poses some serious management concerns, including:
 - 1 the disturbance of bird colonies and seal rookeries by boaters who approach the National Wildlife Refuges too closely
 - 2 the northwest region of the national marine mammal stranding network has identified that the removal of harbor seal pups from their rookery by a well intentioned, but misinformed public, is the largest problem they currently face
 - 3 the resident pods of killer whales are often subject to over enthusiastic whale watchers who are unfamiliar with or ignore the guidelines
- B The aforementioned issues can be readily addressed through an active educational program. However, other problems which face the study area are more difficult to manage, for they require cooperation with Canada:
 - 1 United States whale watching regulations would have to be upheld by Canadian licensed vessels
 - 2 Sanquard, California has been banned from the Puget Sound since 1976, but Seals, Victoria retains a permit to remove killer whales from the wild in order to replace the ones that die in their aquarium. The removal of whales from this model study population poses a serious threat to the objectives of the long term field research
 - 3 The United States has been investing millions of dollars in the Puget Sound Green Bay Clean Up while Canada continues to provide only primary treatment to their sewage. Similarly, development plans off the west side of San Juan Island propose only primary sewage treatment
- C Current commercial fishing activities have not provided reason for concern with regard to stock depletion or incidental take of marine birds and mammals. However, sport fishermen, including divers have the potential of severely depleting the abalone and lingcod populations which remain in restricted areas. Concern has been expressed by residents and commercial fishermen in Island County about aquaculture, especially salmon net pen culture. In 1985 the State produced 24.5 million dollars in wholesale aquaculture products, which represents about 12 percent of the United States aquaculture production. Much of this revenue is currently from shellfish, but the incentive to invest in salmon and net culture is increasing which will require careful review.

D. The study area is located along the primary routes used by oil tankers to refineries in Vancouver, Anacortes, Cherry Point, and Puget Sound. The threat of a catastrophic oil spill in the study area has prompted numerous publications and legislative measures over the years. However, the problem still persists:

1. During 1987 there were 63,847 vessel movements through the study area, excluding ferries, reported on the Seattle Vessel Traffic System. There were 2,432 tanker movements and 28,579 tug with tow movements which accounted for 3.8 percent and 44.8 percent respectively of the year's traffic.
2. During the past two months there were two serious oil spills, one that involved a tug with a barge which sunk releasing 70,000 gallons of bunker crude and one that involved a tanker which had a valve stick and released 5,000 gallons of north slope crude into this productive, but vulnerable system.
3. According to the most recent Coast Guard publication entitled, "Polluting Incidents In and Around U.S. Waters," there were 954 incidents of spills in Washington waters during the years 1982 and 1984 which released 10,527,797 gallons of oil and other hazardous substances, with another 142 incidents which released 9,752 pounds of dry hazardous materials.

IV. Management Concerns

A. Relationship to Other Programs

1. The objectives of the Sanctuary Program can be met in Northern Puget Sound through the coordination of existing Agencies (see sections IIC and IIF) to coordinate research efforts for applications to management concerns and to help implement existing legislation designed to protect the resources:
 - a) The waters surrounding the islands of San Juan County were designated as a Biological Preserve by the State in 1932 (RCW 29B 20-220) which states that people need a collecting permit to remove biological materials from this natural laboratory, for purposes other than personal consumption.
 - b) In 1972, Warner Magnuson introduced a bill (22 USC 476) which states, Congress finds that:
 - the navigable waters of Puget Sound in the State of Washington, and the natural resources therein, are a fragile and important national asset;
 - Puget Sound and the shore area immediately adjacent thereto is threatened by increased domestic and international traffic of tankers carrying crude oil in bulk which increases the possibility of vessel collisions and oil spills; and

- it is necessary to restrict such tanker traffic in Puget Sound in order to protect the navigable waters thereof, the natural resources therein, and the shore area immediately adjacent thereto, from environmental harm

This legislation effectively froze the State's development of oil processing and transportation facilities to the level being handled at the time of the legislation

- c) In 1982, the Puget Sound vessel traffic service regulations on tank vessel operations in Puget sound (33 CFR Part 161) were amended to uphold the interim navigation rule of March 1978 (43 FR12257) which effectively restricted the size of tankers entering the study area to 125,000 dead weight tons (DWT)
- d) The EPA and NOAA have funded numerous studies through the MESA program in recognition of the area's vulnerability to oil spills. The establishment of the Puget Sound Water Quality Authority and the recent designation of Puget Sound as an Estuary of National Significance is further acknowledgment of the need for further research and protection of this vulnerable area.

B. Management of a Conservation Unit:

- 1. In this review we combine two of the three sites originally proposed in 1992 for the Washington State Nearshore Marine Sanctuary in order to afford more comprehensive protection of the marine resources in the Northern Puget Sound ecosystem. The original proposal included approximately 225 square miles (580 km²) of water surrounding the 250 rocks and islands which are collectively referred to as the San Juan Islands. Eighty-four of these small islands, which are critical to the breeding success of sea birds and mammals, are included within the jurisdiction of the National Wildlife Refuge.
- 2. The inclusion of waters in Juan de Fuca Strait, south of the initial study area, would complete the protection afforded the breeding birds and mammals of the entire region, for many species move between these areas to feed and nest or haul out. This approximately doubles the area (650 square miles) included for sanctuary designation by encompassing several sites which more than double wildlife contained in the original proposal.
- 3. Significant improvements in the comprehensive management of representative species of this region are made with the inclusion of the waters surrounding Protection Island and Dungeness Spit which are both National Wildlife Refuges. Protection Island is the single most important sea bird breeding colony in the study area and one of the

major colonies of Washington State. It retains fifty-six percent of all known breeding birds in the study area and approximately fifty percent of all nesting pairs of rhinoceros auklets in the United States. Dungeness Spit provides refuge for the largest aggregation of wintering waterfowl in Juan de Fuca Strait. The open waters of Juan de Fuca Strait are frequented seasonally by the largest aggregation of common murre and minke whales in the State.

4. The Juan de Fuca region is also of great importance to resident harbor seals. Forty-one percent of the approximately 3400 seals in the Northern Puget Sound are found in the Juan de Fuca region. Fifty-one percent of the pups in the combined area are found on Protection Island and Smith Island. Smith Island is the most important Harbor Seal pupping site in the entire region.
5. These colonies and rookeries are situated along the primary inshore vessel traffic lanes which have been identified as being highly vulnerable to oil spills by the Environmental Protection Agency's Marine Ecosystems Analysis (MESA) Puget Sound Project.
6. The fact that the whole study area is surrounded by land and is adjacent to the Padilla Bay Estuarine Research Reserve will facilitate monitoring and enforcement programs.

C. Accessibility:

1. the study area is extremely accessible as mention in section IIIA. Potential Activity Impacts.
2. San Juan Island is also the center for much Canadian tourism, which may provide opportunity international education programs.

D. Surveillance and Enforcement:

1. the site reasons that make the area ideal for long term field studies (eg. sheltered and accessible) will facilitate management activities.
2. most important is the existence of other agencies which can be coordinated to expand their total coverage of the environment.

E. Economic Considerations:

1. Management Costs: this site would probably require less than the average \$250,000 needed to manage a sanctuary because of the opportunities to cooperate with existing management and education programs.
2. Economic Loss Due to Restricted Activities: no restrictions are currently envisioned which would cause any measureable economic loss.
3. Economic Enhancement: there are numerous examples of economic benefits that could be afforded any industry which is dependent on the maintenance of high water quality. The preservation of wildlife is also critical to a strong tourist industry.



Joaquín Balaguer

PRESIDENTE DE LA REPUBLICA DOMINICANA

NUMERO: 319

CONSIDERANDO que es deber del Estado Dominicano conservar, proteger y administrar los recursos renovables de la nación para el uso y beneficio de la presente y futuras generaciones;

CONSIDERANDO que el Banco de la Plata, el cual se encuentra en la Zona Económica Exclusiva de la República Dominicana, es un hábitat único y crítico para las poblaciones de las ballenas jorobadas *Magaptera novaeangliae* durante su periodo de reproducción y cría (diciembre-abril de cada año);

CONSIDERANDO que esta especie está en peligro de extinción y merece protegerse durante esta etapa vulnerable de su ciclo biológico;

CONSIDERANDO que las ballenas jorobadas, así como los demás mamíferos marinos (delfines, focas y otras ballenas, etc.) que se encuentran en nuestras costas forman parte de nuestro patrimonio natural;

VISTA la Ley de Pesca No. 5914 del 22 de mayo de 1962 que permite la creación de áreas marinas para la protección de la fauna marina;

VISTA la Ley No. 186 del 16 de septiembre de 1967, y 1977, que establece la mar territorial, el suelo y subsuelo submarinos, zona económica y exclusiva y el espacio aéreo comprendido sobre ellos;

VISTA la Resolución No. 654 del 12 de octubre de 1940, aprobatorio de la Convención para la Protección de la Flora, de la Fauna y de las Bellezas Escénicas Naturales de los Países de América.

En ejercicio de las atribuciones que me confiere el artículo 55 de la Constitución de la República, dicto el siguiente:

DECRETO:

Artículo 1.—Se crea un santuario de mamíferos marinos el cual se denominará Santuario de Ballenas Jorobadas del Banco de la Plata, definido con los criterios aceptados internacionalmente; sin embargo, en ningún caso se restringirá la pesca de las embarcaciones nacionales dentro del área del Santuario más adelante descrito.

Artículo 2.—Este Santuario estará situado en el Banco de la Plata en la Costa Norte de la República Dominicana, a unos 140 kms. de Puerto Plata, y sus límites se encuentran en el cuadrante geográfico 20° 12' 20" Latitud Norte, 69° 21' 70" Longitud Oeste. El Santuario incluye las aguas del fondo del Océano y el espacio dentro de los límites anteriormente mencionados, con una extensión aproximada de 3,740 kms.2

Artículo 3.—Dentro del área del Santuario queda prohibida:

- a) La matanza, captura o lesión de todos los mamíferos marinos;
- b) La descarga o depósitos de materiales contaminantes explosivos o eléctricos, así como su uso para la pesca.

Artículo 4.—El dragado, perforación y otra forma de alteración del fondo del mar, o construcción de alguna estructura diferente a las auxiliares de navegación, están prohibidas sin el permiso correspondiente de la Comisión Rectora creada por el presente Decreto.

Artículo 5.—Se crea una Comisión Rectora del Santuario formada por sendos representantes de la Dirección Nacional de Parques, del Departamento de Recursos Pesqueros de la Secretaría de Estado de Agricultura, de la Fundación Dominicana Pro-Investigación y Conservación de los Recursos Marinos, Inc., del Centro de Investigaciones de Biología Marina, del Museo Nacional de Historia Natural, de la Marina de Guerra y por el Gobernador de Puerto Plata.

Artículo 6.—Las Secretarías de Estado de las Fuerzas Armadas y de Agricultura quedan encargadas de la ejecución del presente Decreto.

DADO en Santo Domingo de Guzmán, Distrito Nacional, Capital de la República Dominicana, a los catorce (14) días del mes de octubre del año mil novecientos ochenta y seis, año 143° de la Independencia y 124° de la Restauración.

JOAQUIN BALAGUER



Whale Center

NATIONAL OFFICE

3929 Piedmont Avenue, Oakland, California 94611
(415) 654-6621

WE WORK FOR THE WHALES AND THEIR OCEAN HABITAT

Unless nations, companies, and individuals take bold and imaginative steps toward improved protection of the environment, the world must expect a troubled entry into the 21st century.

From the Global 2000 Report to the President

"NATIONAL MARINE SANCTUARIES: A LOCAL PERSPECTIVE"

STATEMENT BY MARK J. PALMER, EXECUTIVE DIRECTOR, WHALE CENTER

House Merchant Marine and Fisheries Committee; Oceanography Subcommittee
Tuesday, April 19, 1988

Mr. Chairman and Members of the Committee:

I am Mark J. Palmer; I am Executive Director of the Whale Center in Oakland, California. The Whale Center is a nonprofit conservation and education organization working to save whales, marine mammals, and their ocean habitat. I would like to thank the Committee for this opportunity to discuss the National Marine Sanctuary Program, some of its strengths and weaknesses, from our local perspective on the Pacific Coast.

Marine Sanctuaries: A Local Look

The Whale Center has been very active in promoting the establishment of Marine Sanctuaries and marine protected areas throughout the world. The Whale Center worked for the establishment of the Gulf of the Farallones and Channel Islands National Marine Sanctuaries along the California coast. We continue to work closely with the staff of the Gulf of the Farallones NMS in our own backyard -- indeed, the Whale Center runs whalewatching and nature study cruises in or adjacent to the Sanctuary practically year-round. We have direct ongoing contact with the beauty and abundant life of this magnificent seascape, just north of the Golden Gate.

To give you a look at the area and the wildlife found there, I have brought a copy of our poster, developed as a joint project with the Gulf of the Farallones NMS office and the Whale Center. This poster depicts the boundaries and the depth isobaths of the Sanctuary itself, surrounded by paintings by Larry Foster and Pieter Folkens of the marine mammals found commonly in this sanctuary. The abundance of whales, dolphins, and seals in the Gulf is quite striking.

Sanctuary status in the Gulf of the Farallones has brought protection to the whole range of resources found in the Gulf. No oil and gas drilling activities or laying of pipelines and similar disturbance of the bottom can be conducted within Sanctuary boundaries. The Sanctuary provides some limited additional manpower to law enforcement agencies like the California Department of Fish & Game and the National Marine Fisheries Service. Public use and

enjoyment of these protected waters is enhanced by Sanctuary educational materials, such as our poster, wildlife checklists, other publications, and interpretive signs onshore. Research efforts funded by the Sanctuary have developed new insights into resource issues, such as seasonal use of the Sanctuary waters by humpback whales, status of the harbor porpoise population, and the status of invertebrate communities. I have examples of some publications and research reports from the Gulf of the Farallones NMS that I would like to submit for the record.

The Sanctuary program is a national program for the exploration, enjoyment, and protection of outstanding marine ecosystems.

Two Sanctuary Proposals: Cordell Bank and Monterey Bay

Two new areas along the California coast have been proposed as National Marine Sanctuaries. I would like to describe both of them for you and to use them as examples of some of the problems we have encountered with the Sanctuary Program.

Cordell Bank, just to the north of the Gulf of the Farallones, is a spectacular undersea mountain, climbing from the ocean shelf to within a few hundred feet of the ocean surface. These spectacular pinnacles of undersea geography and living "gardens" are a unique natural community, documented by extensive diving expeditions. The Cordell Bank also provides a spectacular feeding area for marine mammals and marine birds. We believe Cordell Bank deserves national recognition and the fullest protection possible.

But the process for designating Cordell Bank as a National Marine Sanctuary has been long and drawn out. First proposed for sanctuary status in 1981 by Dr. Robert Schmieder, we have only seen a draft Environmental Impact Statement this past fall. The process is far too slow.

Furthermore, we have raised concerns about the National Oceanic and Atmospheric Administration's preferred alternative in that draft EIS. I noted Cordell Bank is north of the Gulf of the Farallones NMS -- it seems logical to us to make the Cordell Bank boundary contiguous with the existing Sanctuary, to provide good overlap for management purposes and consistency of regulations. Instead, NOAA's preferred alternative in the DEIS proposed to isolate the Cordell Bank Sanctuary as a round boundary 3 miles out from the 50 fathom isobath around the pinnacles. (See attached map; Proposed Boundary #2 is the preferred alternative). The final boundary determination has yet to be made.

A more serious concern is with the failure of NOAA to propose adequate protection from oil and gas activities. The DEIS simply states that a small portion of the Sanctuary (again, within the 91 meter (49.76 fathom) isobath) is deferred from leasing under the Department of the Interior's 5 Year OCS Plan. We feel that oil and gas development activities should be excluded from Cordell Bank, just as such activities are excluded from the existing California sanctuaries, Gulf of the Farallones and Channel Islands NMS.

Turning to Monterey Bay, this Bay contains a vast undersea canyon, larger by far than the Grand Canyon, so close inshore that you need travel only a few hundred yards to begin a marvelous descent into the ocean depths. Marine

mammals and birds are also abundant, with a variety of fish life that supports outstanding commercial and sport harvests. Monterey Bay deserves to be recognized as a part of our national heritage.

Unfortunately, although an active candidate site for a few years, Monterey Bay was dropped by NOAA as a potential Sanctuary site in 1983. Repeated attempts have been made to have NOAA re-consider Monterey Bay since then, without success.

Congressional Designations and Funding

I have pointed out several problems here with the designation process -- an overly long and tedious designation process, rejection of potential candidate sites for designation and an unwillingness to reconsider the site, inadequate protection measures proposed for the sites. All of these problems are related to the inadequacies and lack of funding of the entire National Marine Sanctuary Program.

We propose that Congress take into consideration two solutions:

The first is that Congress designate, through legislation, National Marine Sanctuaries, just as Congress establishes National Parks and Wilderness Areas onshore. National Marine Sanctuaries are a national heritage for the public. In addition to helping speed up the designation process and ensuring adequate protections for these significant marine ecosystems, we feel that Congressional designation of sanctuaries would bring more recognition and national attention to the whole Sanctuary Program. Furthermore, Congress will, perhaps, take more of a proprietary role in seeking adequate funding for sanctuaries if they play a major role in establishing them.

We strongly urge you to consider designating sanctuaries through Congress, and we recommend you start with Cordell Bank and Monterey Bay.

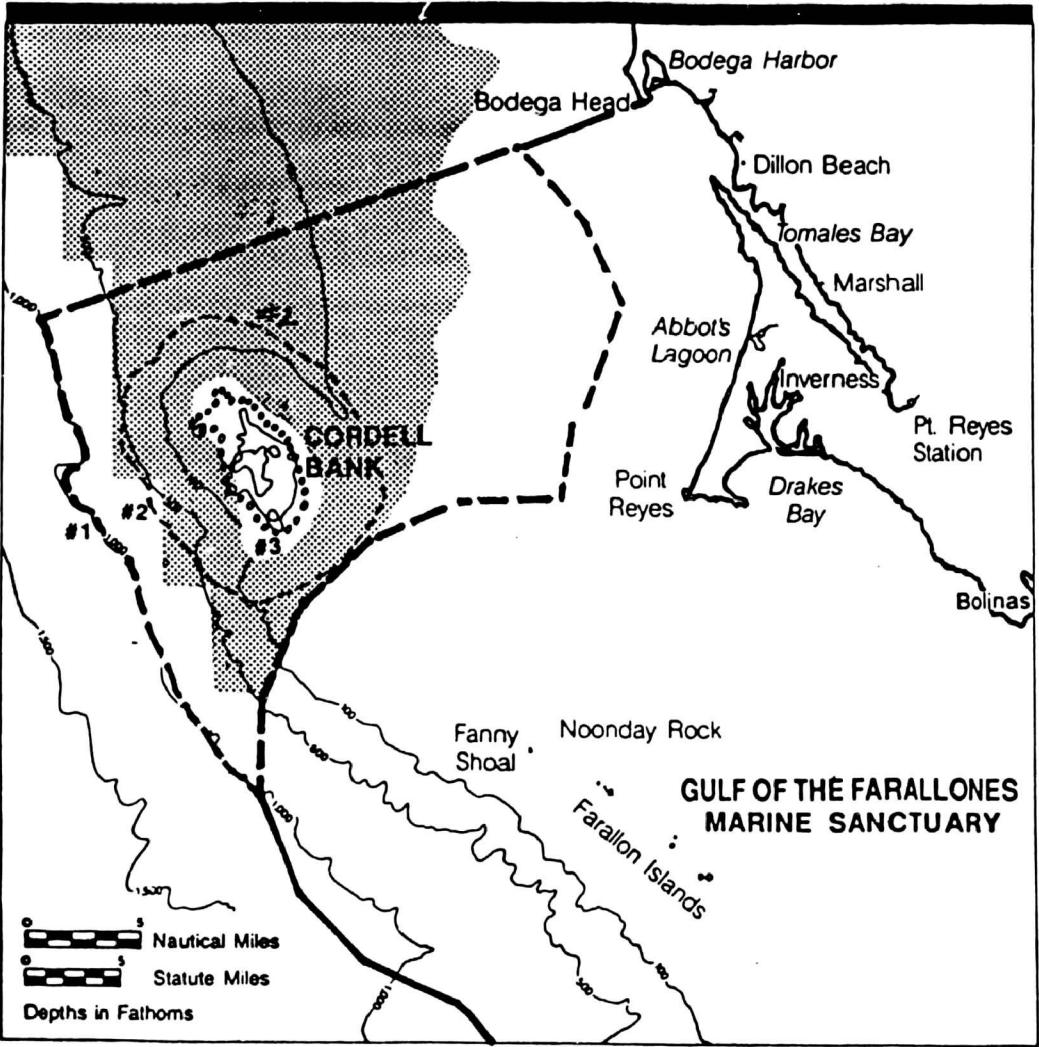
Secondly, adequate funding for the entire National Marine Sanctuary Program is imperative. Funding to speed up the designation process. Funding for management of existing sanctuaries and sanctuaries yet to come. Funding for research and educational programs.

Let me close by inviting members of the Committee to come to California and join the Whale Center on a whalewatching expedition to the Gulf of the Farallones, Cordell Bank, and/or Monterey Bay, to see for yourself, first hand, the magnificent waters and wildlife of our coast!

Thank you again for this opportunity.

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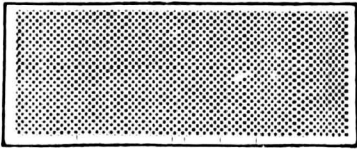
**OIL DRILLING PROPOSALS FOR THE
CORDELL BANK MARINE SANCTUARY**



**Proposed Cordell Bank
National Marine Sanctuary**

- Proposed Boundary #1**
- Proposed Boundary #2**
- oooooo Proposed Boundary #3**

**Interior Department Proposals
for Offshore Oil Leasing Areas**



STATEMENT OF JACK H. ARCHER
SENIOR RESEARCH FELLOW
MARINE POLICY AND OCEAN MANAGEMENT CENTER
WOODS HOLE OCEANOGRAPHIC INSTITUTION
BEFORE THE SUBCOMMITTEE ON OCEANOGRAPHY
AND THE SUBCOMMITTEE ON FISHERIES AND WILDLIFE
CONSERVATION AND THE ENVIRONMENT
CONCERNING
THE REAUTHORIZATION OF
THE MARINE SANCTUARIES ACT
TITLE III OF THE
MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT
APRIL 19, 1988

The views expressed in this testimony are solely those of the presenter and do not necessarily reflect the views of the institution of affiliation.

Thank you, Chairman Lowry and members of the Subcommittee:

I will limit my remarks to a few basic points about the Marine Sanctuary Program. But first, I have several general comments. Number one is that the United States is now responsible for a very large part of the world ocean. The U.S. Exclusive Economic Zone and the outer continental shelf include more than six million square nautical miles of ocean space -- approximately one and a half times the total land mass of the United States. Second, this vast ocean space contains living and nonliving resources of immense value. Its esthetic, scenic and cultural values are similarly valuable -- those that cannot be replaced must be considered priceless. Third, although many of these ocean and coastal resources should be developed and used, some of them are at considerable risk from such human development and use activities and must be protected. Fourth, we have many separate federal laws to develop and preserve ocean and coastal resources -- oil and gas under the Outer Continental Shelf Lands Act, coastal resources under the Coastal Zone Management Act, fish under the Fishery Conservation

and Management Act, and marine mammals under the Marine Mammal Protection Act. But only the Marine Sanctuaries Act allows us to manage resources in discrete areas of the ocean as part of a natural ecosystem, to deal with an assembly of natural resources, and to treat them comprehensively. No other federal law permits us to do this, although it is clear that ocean areas and resources are interdependent and interrelated, and actions in one part of the ocean and directed toward one class of resource may and often do adversely affect other ocean areas, resources, and uses.

Finally, the National Marine Sanctuary Program -- small though it is and with very limited funds -- protects and preserves important ocean and coastal resources. I think that the record of the Program supports this conclusion, and the recent issue of Oceanus published by the Woods Hole Oceanographic Institution and devoted to U.S. marine sanctuaries documents this record in some detail. Perhaps we should look at the Marine Sanctuaries Program as a kind of prototype -- an experiment to learn if we can manage and preserve ocean resources in a responsible and effective manner. Although I agree that the results have not been entirely positive -- the Program has made its share of mistakes and there has been neglect and a lot of footdragging by the current Program managers -- nevertheless I think that we have proven that the model works, and that now it is time to scale up to a full program to preserve significant ocean resources and values.

How Many Marine Sanctuaries Should There Be?

This is my first point. The Marine Sanctuaries Act does not ask, let alone answer, this question, although there are a few guidelines. But it is an important question. The policy the Congress prescribes in the Act is to protect nationally significant ocean resources and values. Not all ocean areas and resources can be said to be "nationally significant." Here is one guideline or limitation respecting the size of the Marine Sanctuary Program. Further, ocean areas to be managed under the Act must be of a size that permits comprehensive and coordinated management. Here is another limitation. There are many other important factors identified in the Act that bear on this question. The point, however, is that neither the drafters of this legislation, the current managers of the Program nor anyone else knows at this time how many sanctuaries we should have to fulfill the policy established by the Congress. But, whatever the actual number is, it is certainly more than the seven existing sanctuaries, or ten, or perhaps many more than the 30 or so potential sanctuaries identified by NOAA on its site evaluation list.

I recommend that the Congress approach this question of the ultimate size of the Marine Sanctuary Program by setting a series of interim goals. Since 1975, NOAA has created seven sanctuaries, and is currently planning to create three additional sites. In addition, there is a backlog of approximately 30 sites meriting further study as potential sanctuaries. It

would be a reasonable policy for the Congress to require during the next reauthorization period that NOAA must complete the designation of at least two of the candidate sites that have been pending the longest -- Cordell Banks offshore California (since 1983) and the Flower Garden Banks in the northwestern Gulf of Mexico (since 1977) -- and move an additional five potential sites through the designation process.

The sanctuary designation process is complicated. After NOAA has studied a site and prepared a draft environmental impact statement, draft management plan and proposed regulations, the agency must submit all these documents to this Committee and the Senate Committee on Commerce, Science and Transportation for a period of review (45 legislative days). Either Committee or both may hold hearings and issue a report on the proposed designation that must be considered by NOAA. Thereafter, NOAA may complete the designation, subject to a second Congressional review period (45 legislative days) during which the Congress may disapprove the designation by passing a joint resolution of disapproval.

I suggest that NOAA be required to submit documentation for five new sites from the site evaluation list to these Committees for their initial review during the next reauthorization period. This mandate will clearly require that NOAA act diligently in carrying out its responsibilities under the Act (which it has not done during recent years), but preserve its authority (and the authority of Congress) to take a final look at the proposed sites before actual designation.

The Congress may also want to indicate a priority among the potential sites on the site evaluation list, or perhaps specify the areas in which sanctuaries should be created. It would certainly be proper for the Congress to do so, and the recent Program performance strongly suggests that NOAA needs more specific guidance in managing marine sanctuaries.

This interim goal of designating five new sites and completing the designation of two candidate sites would guide NOAA during the next four years. At the end of this period, Congress may establish another set of interim goals to guide Program development during the next reauthorization period. In this manner, questions respecting the proper size and scope of the Marine Sanctuary Program may be considered in terms of Program experience, new information concerning ocean resources requiring protection, and a balancing of program costs and benefits. By adopting this approach, Congress would create a predictable, rational, and steady process by which NOAA could meet its goal of protecting nationally significant marine resources.

How Much Should We Spend on Marine Sanctuaries?

Considering the size of the ocean area in which sanctuaries may be created (more than six million square nautical miles) and the array of resources contained in this ocean space, it is difficult to conclude that we have spent too many federal dollars to protect these resources. It is

apparent that we spend vastly more to preserve terrestrial rather than ocean resources and areas. The Marine Sanctuary Program's current appropriation is less than \$2.5 million. In comparison, the appropriation for the National Park Service for this fiscal year is more than \$700 million. The National Park System contains 341 areas and 79.8 million acres; the Marine Sanctuary Program is quite small -- seven sites comprising less than 2500 square nautical miles.

We also spend much more to develop ocean resources than we do to protect them. For example, to manage commercial fisheries in the U.S. Exclusive Economic Zone and to enforce fishery management plans, the National Marine Fishery Service spent more than \$166 million in fiscal year 1987. In addition, the Coast Guard spend \$60 million in 1987 on EEZ fishery enforcement activities.

I recommend that the Congress be guided in authorizing funding for marine sanctuaries by the interim goals that it sets for the Marine Sanctuary Program. For example, NOAA should be able to estimate and to project the administrative costs of managing and designating sanctuaries based upon its Program experience of many years. An interim goal of five new sanctuaries over the next four years, plus completing the designation of two candidate sites, would establish one major component of Program costs.

In addition, NOAA should be required to establish a Marine Sanctuary Research Agenda which will enable it to fulfill the Act's research mandate in each sanctuary during the reauthorization period. This Research Agenda

would be the second major portion of Program costs. My experience with the Marine Sanctuary Program leads me to believe that this information could be provided within a reasonable time by Program staff, and that this data would provide a rational basis on which to authorize funds for the Program. Certainly this procedure would be based upon Program goals and improve upon the hit-or-miss method currently employed to decide how much money to spend on marine sanctuaries.

I also suggest that the Congress consider funding the Marine Sanctuary Program from revenues generated by oil and gas development on the outer continental shelf. I am aware of the opposition of the current Administration to using oil and gas revenues for such purposes, but notwithstanding this opposition, I think that there is an obvious nexus between earning revenues from exploiting ocean energy resources and expending funds for preserving other ocean resources, some of which incur at least a degree of risk from oil and gas development. OCS revenues received by the federal government totalled more than \$6.3 billion during fiscal year 1986. It does not seem unreasonable to dedicate a very small percentage of these funds (perhaps no more than one-tenth of one percent of the total each year) to pay the costs of the Marine Sanctuary Program.

It is also reasonable for Congress to require that penalty payments for violating sanctuary regulations and awards for damages to sanctuary resources be dedicated for Marine Sanctuary Program purposes, primarily to restore damaged resources such as the coral resources destroyed as a result

of the Wellwood grounding in the Key Largo Sanctuary in 1984. The bill introduced by Congressman Studds, H.R. 3640, as well as the bill introduced by Congressman Lagomarsino, H.R. 3772, would accomplish this result. In particular, Congressman Lagomarsino's proposal to create an Emergency Response and Damage Assessment Fund from damage awards received by the Program should be adopted.

Is the Sanctuary Designation Process Too Complicated?

The 1984 amendments greatly expanded the number of actors in the sanctuary designation process, and required generally much wider "consultation." Since 1984, the Program's record of managing and designating new sanctuaries falls way below the level of reasonable expectations. The delay in completing the designation of Cordell Banks and the Flower Gardens is particularly disturbing. What accounts for this level of performance? One possible source of delay and poor performance is the complicated sanctuary designation process. But, I don't think that we can conclude that this is the actual reason, because NOAA hasn't carried a sanctuary designation through the entire process. However, it seems reasonable to me that the Congress could impose an outside limit by which NOAA must complete the designation process or explain to the public and to Congress the reasons for any delay and the agency's plans and timetable to complete a designation. I would suggest a limit of 18 months or two years

Act at level funding for an additional four years. Otherwise we can expect only more of the same.

from the date a site is declared to be an active candidate for sanctuary designation. If we had such a requirement today, Cordell Banks, the Flower Gardens, and Norfolk Canyon would all now be marine sanctuaries.

There is another apparent "gap" in the designation process -- the opportunity for indeterminate delay between the time Congress completes its first legislative review of a proposed sanctuary and a subsequent decision by NOAA to issue the notice of final sanctuary designation and environmental impact statement. Cordell Banks has evidently fallen into this "gap," although I suspect that a little Congressional attention to the matter might spur the agency on to issue the final notice. If this gap is indeed a serious problem, then Congress could easily resolve it by requiring that NOAA make up its mind to issue the final notice of sanctuary designation or to withdraw the proposal within a date certain after Congress completes its legislative review.

There may be other explanations for the lack of progress in protecting nationally significant ocean resources under the Marine Sanctuaries Act. Does NOAA require additional funds to carry out the policies established by the Congress 16 years ago? Are more Program staff needed? Should NOAA's ocean resource management and protection activities, including marine sanctuaries, be more efficiently and effectively organized within the agency to improve overall performance? These questions should be answered during oversight of the Marine Sanctuary Program. I hope that this Committee will follow up on these and similar issues rather than simply reauthorizing the



FRIENDS OF THE EARTH

TESTIMONY OF THE N.W. OFFICE
FRIENDS OF THE EARTH

Submitted to the
SUBCOMMITTEE ON OCEANOGRAPHY
COMMITTEE ON MERCHANT MARINE AND FISHERIES
U.S. HOUSE OF REPRESENTATIVES

An Oversight Hearing on
Title III of the Marine Protection, Research,
and Sanctuaries Act

Washington, D.C.
March 30, 1988

My name is Collette DeFerrari, Conservation Representative for Friends of the Earth, 4512 University Way N.E., Seattle, WA 98105. Friends of the Earth is a national environmental organization with approximately 1,500 members in the Pacific Northwest, most of whom live in the coastal zone.

Title III of the Marine Protection, Research and Sanctuaries Act is a crucial step in what should be a national commitment to protecting and restoring our ocean resources. In designating certain marine areas as Marine Sanctuaries, the Act recognizes the unique values of these offshore areas, and provides for research, protection, and education. It is important, not as a means of putting offshore lands off limits, but as a way to ensure that uses within sanctuaries are compatible with the marine ecosystem.

Unfortunately, however, the potential of the Marine Sanctuaries Act has not been realized. Under this administration the program has been grossly underfunded. Research and education activities have been cut back, only one small sanctuary has been designated, and virtually no work has been done to add sites to the site evaluation list or to move sites already on the list to active status. For example, we have heard nothing more of the candidate sites for Washington state since they were put on the site evaluation list in 1984. In particular, the Outer Coast area and the San Juan Islands area are deserving of Marine Sanctuary status. In the Preliminary Candidate Marine Sanctuary Site Evaluation of 1982, the Outer Coast area was described as "highly productive" and "representative of pristine coastal environments," and the area around the San Juans was characterized as supporting "an unusually diverse array of marine habitats within a relatively small area."

At this time of decision regarding the future of the Marine Sanctuaries program, we strongly urge the Merchant Marine and Fisheries Committee to empower this program to effectively protect our valuable marine resources. We urge that the Marine Sanctuaries Act be reauthorized with strengthening amendments, and that it be adequately funded. Specifically, we ask that:

- * A mechanism to force timely consideration of sanctuary proposals be incorporated into the program. NOAA should be mandated to review the site evaluation list and designate new sites within a given time frame (ie., NOAA must designate at least two sites as marine sanctuaries by the time the Act next comes up for reauthorization.)

- * Adequate damage regulations and penalties regarding sanctuaries be established. We support directing damage penalty monies into restoration of damaged resources or into other sanctuary-related projects rather than into the federal government general revenues.

- * Congress appropriate at least \$3.7 million to the Marine Sanctuaries program in 1989. This is considered the minimum needed to maintain the presently designated sites, and to add at least one additional site in the near future.

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The Marine Sanctuaries program is an important facet of ocean awareness and protection in this country. Without needed changes and the necessary funds, however, we fear that this program will continue to fall short of both its expected and potential levels of effectiveness.

Thank you for the opportunity to submit these comments. Please send us a copy of the Hearing Record when published.

